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IN THE

Supreme Court of the United States

October Term, 1958

No. 370

SYLVIA SCHINDLER HOLLAND,
Petitioner,

vs.

NORMAN N. HOLLAND,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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NORMAN N. HOLLAND,

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

SYLVIA SCHINDLER HOLLAND, petitioner herein, prays that a writ of certiorari issue to review an order of the Supreme Court of Florida, entered in the above-entitled case on April 1, 1958. Petition for rehearing was denied by order of the Supreme Court of Florida, entered on May 20, 1958.

Citations to Opinions Below

There are no opinions below.

Jurisdiction

The order sought to be reviewed is that of the Supreme Court of Florida which was entered on April 1, 1958 (R. 2621, Appendix B) and which denied a petition (R. 2569-2573, Appendix D) for leave to apply to the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, for leave to file a Bill of Review or a Bill in the Nature of Review (R. 2574-2616, Appendix E), predicated upon newly discovered evidence. Petition for rehearing was denied by order of the Supreme Court of Florida dated May 20, 1958 (R. 2626, Appendix C).

The decree sought to be reviewed by the Bill of Review or Bill in the Nature of a Bill of Review was entered on July 25, 1955 in the said Dade County Circuit Court (R. 2538-2540) granting an absolute divorce in favor of respondent against petitioner. The decree was affirmed without opinion by the Supreme Court of Florida on May 1, 1957 (R. 2548), 95 So. 2d 424, and petition for rehearing was denied on June 5, 1957 (R. 2562).

Petitioner's time within which to file this petition was extended to September 19, 1958, by order dated July 23, 1958 (Appendix A). The jurisdiction of this Court is invoked under 28 U. S. C., Section 1257(3).

How Federal Question is Presented

The federal question sought to be reviewed herein was raised in the petition to the Supreme Court of Florida for leave to apply to the Circuit Court in and for Dade County, Florida, for leave to file a Bill of Review or Bill in the Nature of a Bill of Review, and also in the proposed Bill of Review or Bill in the Nature of a Bill of Review, filed therewith and incorporated in said petition by reference. It was alleged in said petition and in said proposed Bill of Review that in the light of newly discovered evidence of the venal and unethical practices of respondent's counsel and of the Circuit Court Judge and special master before whom the instant cause was heard—such evidence being disclosed for the first time during the legislative investigation of the said Judge in May, 1957, and his impeachment trial before the Senate of Florida in July and August, 1957—petitioner was deprived of "a fair and impartial trial, equal protection of the law, and due process of law contemplated by the Constitution of the State of Florida and of the United States of America" (R. 2570, 2589, 2591, 2598, Appendix D-1, E-16, E-18, E-23).

The Supreme Court of Florida denied without opinion the petition for leave to apply to the Circuit Court for leave to file a Bill of Review. Rehearing was also denied.

Constitutional Provision Involved

Amendment 14 to the Constitution of the United States, Section 1, provides:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Questions Presented

I. Was petitioner denied due process of law by the refusal of the Supreme Court of Florida to permit review of a final decree of divorce shown by sworn testimony—adduced during the course of a subsequent legislative investigation of the presiding judge and during his impeachment trial before the Senate of Florida—to have been tainted by corrupt and unethical conduct of the judge, the special master and respondent's counsel?

II. Was petitioner denied due process of law in a divorce action in which a final decree of divorce was entered against her, after trial before a special master appointed by the presiding judge, in view of the following incontrovertible facts:

(a) that the master had received from respondent a fee in undisclosed amount at an unrevealed time prior to filing the master's report and that such fee was ratified by the judge without inquiring disclosure either to the judge or to petitioner of its amount or the circumstances of its payment;

(b) that during the pendency of the action before the judge and the master, the judge realized a 900% profit

from his investment in a highly speculative business venture at the invitation of the law partner of the special master—at a time when their law firm was actively practicing before the judge's court;

(c) that prior and subsequent to the judge's confirmation of the master's report, respondent's counsel had given the judge numerous gifts of value and had made substantial contributions to the judge's political campaigns for judicial office;

(d) that the judge, in justification of his unethical conduct, pleaded as a defense at his subsequent impeachment trial that the Canons of Ethics, although adopted by the Supreme Court of Florida, were never enacted into law by the legislature and therefore did not have the force of law in Florida.

Statement

During July and August of 1957, Circuit Judge George E. Holt, Senior Judge of the Eleventh Judicial Circuit of Florida, was tried before the Senate of Florida sitting as a court of impeachment. Articles of Impeachment had been preferred against Judge Holt on May 27, 1957.[1]

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[1] Journal of the Florida House of Representatives, May 27, 1957, pp. 1727-1728; Impeachment Appendix No. 1, 10 Fla. Supp. 188 (1957). The Official Journals of the Florida Senate and House of Representatives will be judicially noticed by the Supreme Court of Florida. *State ex rel. X-Cel Stores* v. *Lee*, 122 Fla. 685, 166 So. 568, affd. on reh. 122 Fla. 670, 166 So. 262 reh. den. 122 Fla. 700 (1936); *State ex rel. Lane Drug Stores* v. *Simpson*, 122 Fla. 582; 166 So. 227, affd. on reh. 122 Fla. 670, 166 So. 262 (1935); *State ex rel. Bd. of Commissioners* v. *Helseth*, 104 Fla. 208, 140 So. 655 (1932); *Gaynn* v. *Hardee*, 92 Fla. 543, 110 So. 343 (1926); *State ex rel. Buford* v. *Carley*, 89 Fla. 361, 104 So. 577 (1925); *Amos* v. *Mosley*, 74 Fla. 555, 77 So. 619 (1917); *State ex rel. Turner* v. *Hocker*, 30 Fla. 358, 18 So. 767 (1895); See also 31 C. J. S. Evidence § 43, p. 608. This Court will judicially notice matters of which the court below may take judicial notice. *Hanley* v. *Donoghue*, 116 U. S. 1, 6 (1885); *Lloyd* v. *Matthews*, 155 U. S. 222, 227 (1894); *Bothwell* v. *Buckbee, Mears Co.*, 275 U. S. 274, 279 (1927).

On the basis of disclosures and express admissions made in testimony before a special committee of the Florida House of Representatives appointed to investigate charges of misconduct by Judge Holt, and before the Florida Senate during Judge Holt's impeachment trial, petitioner, on February 25, 1958, filed in the Supreme Court of Florida, a petition for leave to apply in the Circuit Court of the Eleventh Judicial Circuit for leave to file a Bill of Review (R. 2568-2617).

Petitioner's proposed Bill sought, on the basis of such newly discovered and incontrovertible evidence, review of proceedings in the Circuit Court which had resulted in the entry of a final decree of divorce against petitioner in July, 1955, which decree had been affirmed by the Supreme Court of Florida on May 1, 1957—shortly before the Florida House of Representatives voted to impeach Judge Holt.

* * *

Petitioner and respondent, resident domiciliaries of New York, had been married for eighteen years. In October, 1953, respondent abandoned petitioner and their two children and after he had been apprehended in adultery, absconded and established a purported residence in Miami Beach, Florida.

On May 24, 1954, respondent commenced a divorce action in the Circuit Court of the Eleventh Judicial Circuit, in and for Dade County, Florida, alleging petitioner's cruel and inhuman treatment and her habitual indulgence in a violent temper (R. 1-8). Petitioner, at all times a New York resident domiciliary, was served with process in New York. She appeared specially and moved to dismiss on the ground that respondent was not a bona fide resident of Florida and that he had established a purported residence solely to obtain a divorce (R. 12).

The case came—and remained throughout—before Circuit Judge George E. Holt.

At about the time the case was assigned to Judge Holt, respondent's attorney of record retained Morton Rothenberg, Esq. as associate counsel (R. 10-11). The order

allowing Rothenberg to enter the case was signed by Judge Holt on June 15, 1954 (R. 10).

Judge Holt denied petitioner's motion to dismiss with leave to set up lack of jurisdiction as a defense, and granted petitioner the grossly inadequate sums of $200 suit money and $500 counsel fee (R. 35), disregarding respondent's undenied wealth (R. 14-18).

Petitioner filed an answer denying respondent's allegations of cruelty, and affirmatively pleading lack of jurisdiction, respondent's adultery, cruel and inhuman treatment, abandonment of petitioner and their children and failure to support them (R. 29-34).

The parties stipulated that the cause be referred to a special master—yet unnamed—to be appointed by Judge Holt, and that respondent would defray the cost of the reference. Judge Holt appointed as special master, John W. Prunty, a Miami attorney (R. 60), who was then the general law partner of Thurman A. Whiteside, the partners conducting their law practice under the firm name of Yonge, Whiteside and Prunty.

The trial was conducted before Special Master Prunty during January and February, 1955. The Master filed his report with Judge Holt on May 5, 1955, in which he found that respondent was a Florida resident, that he had proved his case, and that petitioner failed to establish her defenses, including respondent's adultery. The Master recommended a decree of divorce in respondent's favor (R. 2442-2464). In reaching his conclusions, the Master rejected the testimony of petitioner's many disinterested witnesses and ignored petitioner's documentary evidence, *i.e.* letters, motion pictures and photographs, as well as respondent's own admissions.

The Special Master's report acknowledged that the Master's fee had been paid by respondent (R. 2463) but failed to state its amount, and when it had been paid.

The Master's failure to report the amount of his fee directly violated Rule 10(d) of the Circuit Court Rules, which provides:

"No Master shall have authority to set his or her fee, but may suggest to the Court what in his or her opinion may be the reasonable amount thereof."

In her bill of exceptions, petitioner took exception to respondent's payment of the fee in undisclosed amount and at an unrevealed time prior to the filing of the Master's report (R. 2497-2498). Judge Holt overruled the exception and ratified the fee without requiring any disclosure either to the court or to petitioner of its amount or the time and circumstances of its payment.

On July 25, 1956, Judge Holt entered a decree of divorce in respondent's favor.

While petitioner's appeal from the decree was pending before the Supreme Court of Florida, three successive reports were filed by the Grand Jury of Dade County charging Judge Holt with improper conduct in office and alleging improper professional practices in cases before Judge Holt by several attorneys, including Special Master Prunty (then Judge Prunty, having been appointed to the Circuit Court bench in January, 1956).[3]

The Florida Bar then investigated charges of misconduct against Judge Holt. However, the Supreme Court of Florida, in February, 1957, enjoined such proceedings on the ground that only the House of Representatives had the constitutional power to determine whether a Circuit Judge should be tried for misdemeanor in office.[4]

Thereafter the House of Representatives appointed a committee to conduct a "thorough investigation into the said charges of official misconduct of Circuit Judge Holt in and for the Eleventh Judicial Circuit made by the Dade County Grand Jury in and by its presentments of April

[3] See *In re Dade County Grand Jury*, 9 Fla. Supp. 98 (1956). Grand Jury findings that Judges Holt and Prunty were unfit and recommendations that they be impeached were expunged by the Supreme Court of Florida on the ground that the Grand Jury exceeded its jurisdiction. *State ex rel. Brautigam v. Interim Report of Grand Jury, Fla.*, 93 So. 2d 99 (1957). The Grand Jury's charges of improper practices arose in connection with the maladministration by Prunty and another as curators appointed by Judge Holt in two estate matters.

[4] *In re Investigation of Circuit Judge*, Fla. 93 So. 2d 601 (1957).

26, 1956, May 8, 1956 and September 21, 1956 [5]. The committee conducted hearings during the month of May, 1957,[6] at which Judge Holt, Judge Prunty and his former law partner, Thurman A. Whiteside, and Morton Rothenberg, respondent's counsel, testified. The Committee reported that Judge Holt had committed "misdemeanor in office" and that his conduct "tends to arouse the suspicions of the public that Holt's social and business relationships constitute an influence in his judicial conduct, and constitutes misdemeanor in office."[7] The Committee report concluded that "There have been flagrant violations of the Code of Ethics governing judges by Judge Holt", and recommended impeachment.[8]

Based upon Judge Holt's testimony, the Committee charged, as misconduct, his participation—at a 900% profit—in a "highly speculative venture",[9] with Prunty's law partner, Thurman A. Whiteside, during the time Prunty and Whiteside were practicing before Judge Holt's court. The Committee reported that in April, 1952, Judge Holt invested $200 in cash with Whiteside without written memorandum. In August, 1952, Judge Holt received a check for $1,124.28 as a return on his $200 investment. In January, 1953, Judge Holt made another investment—also in cash—with Whiteside, in the amount of $250. Again nothing in writing passed between the parties. For the $250, Judge Holt received a total return of $2,857.45.[10]

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[5] Journal of the House of Representatives, State of Florida, May 27, 1957, p. 1687.

[6] During the same month—May, 1957—the decree of divorce entered against petitioner by Judge Holt was affirmed by the Supreme Court of Florida, without opinion, 95 So. 2d 424.

[7] Journal of the House of Representatives, State of Florida, May 27, 1957, p. 1688; Impeachment Appendix No. 1, 10 Fla. Supp. 188 at 190 (1957).

[8] *Ibid.*, p. 1689; 10 Fla. Supp. 194.

[9] *Ibid.*, p. 1688; 10 Fla. Supp. 190.

[10] *Ibid.*, p. 1688; 10 Fla. Supp. 191.

Judge Holt and Whiteside testified that these investments involved the contemplated sale of surplus aviation cylinders. The Committee reported that in January, 1954, Whiteside paid Judge Holt $2,800 on his $250 investment "upon the assumption that the cylinders had been sold,"[11] although the cylinders had been "rejected by the purchaser" and were actually sold nearly eighteen months later, in May, 1955. However, Judge Holt retained the $2,800.[12] Judge Holt and his wife "did not show this gain on their 1955 income tax return but did show it on their 1956 income tax return after the investigation of the Dade County Grand Jury."[13] Significantly, the *Holland* case was pending before Judge Holt and Whiteside's partner, Prunty, and respondent paid the master's fee in undisclosed amount to Prunty during this very eighteen-month period.

The Committee also found that Whiteside arranged for Judge Holt to purchase two Jaguar automobiles,[14] and that during the time Judge Holt was involved in these transactions with Whiteside, Whiteside's law partner, Prunty, was appointed curator of an estate and fees exceeding $32,000 were allowed Prunty by Judge Holt for services as curator extending over less than one year.[15] The Commit-

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[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Ibid.*, p. 1688; 10 Fla. Supp. 192.

[15] *Ibid.*, p. 1688; 10 Fla. Supp. 191. Prunty's fees as curator, which the Committee report condemned as "excessive" and "an abuse of judicial discretion," were awarded for services extending over the same period when the *Holland* case was pending before Judge Holt and Special Master Prunty. As shown, Judge Holt permitted Prunty's fee in *Holland* to remain a secret.

tee condemned the Holt-Whiteside-Prunty deals as violating the Canons of Ethics.[16]

[16] Judge Holt testified (Official Transcript of Testimony at public hearings before Special Committee appointed under Fla. H. R. Resolution 63, 1957 Session, p. 33):

"Q. It didn't strike you as unusual, as a business man and a Judge, to make, in fourteen months, over nine hundred percent profit? A. No, sir, it did not.

Q. One final question, sir: You are, of course, familiar with the ethics governing Judges in making appointments to lawyers in which there are some interests involved, financially and otherwise, are you not, sir? A. Yes, sir.

Q. Didn't it occur to you in making the appointment that Mr. Prunty was a law partner of a man that you were engaged in a business transaction with and making large sums of money with? A. No, sir, it never did.

Q. It didn't occur to you? A. No, sir.

Q. This just seemed ordinary and usual? A. That's right."

* * *

(Official Transcript pp. 101-102):

"Q. If one of my judges over in my circuit appoints me guardian or curator or master or something, pending before him that is not, in your judicial opinion, considered practicing law before him? A. It is not.

Q. So I could do him all the favors and give him all the gifts I wanted to, and it would not be within the purview of the ethics which says that I cannot curry favors with a judge and give him gifts. Is that your interpretation? A. That's my interpretation of it."

Judge Prunty was asked his interpretation of the Canons of Ethics governing the relationship between lawyers and judges (Official Transcript, p. 219):

"Q. Then, as I interpret it, sir, the ethics that have to do with favors and giving gifts from lawyers to judges, and things of that nature, don't really mean what they say, but must be interpreted in light of the circumstances in each case? A. That would be my feeling about it. In other words, I would hesitate to say that it is completely wrong and unethical for a judge to borrow money from a lawyer if it is strictly and completely a business transaction."

The Committee also found that "Judge Holt has made a practice of accepting gifts from attorneys not only at Christmas, but at other times and that some of these gifts are not just token gifts. One witness Rothenberg, an attorney, testified that his Christmas gifts averaged $20.00 to $40.00 each."[17] The said Rothenberg, respondent's counsel in the instant divorce action, had also given Judge Holt campaign contributions when he was a candidate for judicial office.[18]

On May 27, 1957, the Florida House of Representatives voted, 65 to 25, to impeach Judge Holt, declaring that he "was and is guilty of misbehavior and misdemeanor in office"[19] in that he did "(a) Accept favors from attorneys practicing before his court. (b) Permit his personal relationships with individuals to unduly and improperly influence his judicial appointments and the allowance of fees

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[17] Journal of House of Representatives, May 27, 1957, p. 1089, 10 Fla. Supp. 193.

[18] Rothenberg testified (Official Transcript of Testimony before Special Committee under Fla. H. R. Resolution 63, 1957 Session, p. 534):

"Q. Have you ever made any gifts to Mr. Holt? A. At Christmastime occasionally we would give a Christmas present either to the Judge or the Judge's wife—we knew them—or possibly to both.

Q. Do I understand that that is a fine gift, then. A. That's right.

Q. You say 'we.' A. My partner and I. It was part of our Christmas gifts that we gave, yes.

Q. Now, did you make any contribution to Judge Holt's campaign in 1954? A. Yes, sir."

* * *

(Official Transcript, p. 544)

"Q. Mr. Rothenberg, I want to clear up this campaign contribution of 1954 thing. You stated that one occasion you personally contributed the sum of $500? A. Yes, sir.

Q. Then on another occasion there was a total of $180 contributed by you in this group that Mr. McLane read off a few minutes ago? A. Yes, sir."

[19] Journal of the House of Representatives, State of Fla., May 27, 1957, pp. 1727-1728, 10 Fla. Supp. 198, 202.

to such appointees. (c) Borrow money from an attorney practicing before his court. (d) Award excessive and unnecessary fees. (e) Accept gifts from attorneys practicing before his court. (f) Flagrantly violate certain provisions of the Code of Ethics covering judges as adopted by the Supreme Court of Florida."[20]

The impeachment trial took place before the Senate of the State of Florida from July 8 to August 15, 1957. Judge Holt's answer to the Articles of Impeachment admitted, *inter alia*, that he had accepted favors and gifts from attorneys, denied that any of his actions were improper, and pleaded in defense that the Canons of Ethics—approved by the Supreme Court of Florida—were never enacted into law and that "Said Code of Ethics does not have force of law in Florida."[22] Judges Holt and Prunty,

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[20] *Ibid.* p. 1727; 10 Fla. Supp. at 198.

[21] A bill of particulars of the Articles of Impeachment alleged, *inter alia*,

> "That between the dates of December 20, 1955 and January 18, 1956 the said Circuit Judge George E. Holt accepted from one Morton Rothenberg, an attorney of Dade County, Florida practicing before the said Circuit Judge George E. Holt in the Eleventh Judicial Circuit of Florida, a gift consisting of robe and pajamas, of the approximate value of Forty Dollars ($40.00) that the said Circuit Judge George E. Holt also accepted from the said Morton Rothenberg at various times prior thereto gifts consisting of silverplated wine bucket, a chafing dish, steak knives, and other gifts of value." Journal of the Senate, State of Florida, July 8, 1957, p. 14.

Rothenberg was excused from testifying at the impeachment trial upon certification by his physician that he was ill. Journal of the Senate, State of Florida, July 30, 1957, p. 222.

[22] Journal of the Senate, State of Florida, July 22, 1957, pp. 48-49.

and Mr. Whiteside testified, denying that their actions had been improper.[23]

The Senate voted 20 to 14 to impeach Judge Holt, but the vote was short of the Constitutional two-thirds required for impeachment [24] and Judge Holt returned to the Circuit Court bench.

Petitioner then filed in the Supreme Court of Florida her petition for leave to apply to the Circuit Court for leave to file a Bill of Review (R. 2569-2573, Appendix D). She urged that, in the light of the newly-discovered evidence of the unethical practices of the Judge, the Special Master and respondent's counsel, all of which she specifically alleged (R. 2569-2571, Appendix D)—which manifestly influenced the determination against her—petitioner had been denied a fair and impartial trial consistent with the requirements of due process (R. 2570, 2589, 2591, 2598; Appendix D-1, E-16, E-18, E-23).

The petition was denied without opinion (R. 2621, Appendix B). Petition for rehearing was also denied (R. 2626, Appendix C).

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[23] Journal of the Senate, State of Florida, August, 1957, pp. 409-435; 437-445; 440-459 (Holt); 281-285; 339-355 (Prunty); July, 1957, pp. 112-120; 121-134 (Whiteside). Judge Prunty testified (Journal of the Senate, State of Florida, August 6, 1957, p. 347):

"Q. Did you heretofore make out a list of your Masterships before Judge Holt, or by Judge Holt? A. Yes, I made all sorts of lists.

* * *

Q. What is the last one shown on that list, Judge Prunty? A. Holland versus Holland.

Q. What was the Master's fee awarded in that case? A. $3,500."

* * *

This was the first statement under oath of the amount of the Master's fee in the *Holland* case. The amount was first revealed in respondent's brief on the appeal from the divorce decree, nearly two years after the filing of the master's report.

[24] Journal of the Senate, State of Florida, August 15, 1957, p. 512.

Reasons for Granting the Writ

I.

"A fair trial in a fair tribunal is a basic requirement of due process."[25] At the threshold of every inquiry as to whether the acts of a judicial tribunal in a given case meet the standards of due process is the presumption that the tribunal itself—whether right or wrong in its determinations—was thoroughly impartial and without personal interest in the result.[26] Indeed, this Court has observed that "our system of law has always endeavored to prevent even the probability of unfairness."[27] In John Adams' historic phrase, "It is the right of every citizen to be tried by judges as free, impartial, and independent as the lot of humanity will admit."[28]

The issues of due process raised in this case are as important as judicial integrity is important to our form of government. Mr. Justice Frankfurter[29] stated the proposition in these words:

> "The administration of justice by an impartial judiciary has been basic to our conception of freedom ever since Magna Carta. It is the concern not merely of the immediate litigants. Its assurance is everyone's concern, and it is protected by the liberty guaranteed by the Fourteenth Amendment."

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[25] Mr. Justice Black in *Re Murchison*, 349 U. S. 133, 136 (1955).

[26] In *N. L. R. B.* v. *Ford Motor Co.*, 114 F. 2d 905, 909 (6 Cir. 1940), the Court said, "We may accept as fundamental, the axiom that a trial by a biased judge is not in conformity with due process of law." See also *N. L. R. B.* v. *Phelps*, 136 F. 2d 562 (5 Cir. 1943); *State* v. *Calhoon*, Fla., 102 So. 2d 604, 609 (1958).

[27] *Re Murchison, supra*, 349 U. S., at 136.

[28] Art. XXIX of the Declaration of Rights of the Constitution of Massachusetts, 1780, quoted by Mr. Justice Franfurter, in his concurring opinion in *Pennekamp* v. *Florida*, 328 U. S. 331, 355 (1946).

[29] Dissenting in *Bridges* v. *California*, 314 U. S. 252, 282 (1941).

II.

By rejecting petitioner's application for *leave* to apply to the Circuit Court for leave to file a Bill of Review, the Supreme Court of Florida has decreed that even with substantial, incontrovertible evidence—sworn testimony of the very principals involved—clearly demonstrating an utter lack of integrity and complete disregard of basic ethical standards on the part of the trial judge and special master, whose determinations foreclosed petitioner's marital rights, she is without remedy in the Courts of Florida.

Did petitioner have a fair hearing before a judge who freely accepted gifts from respondent's attorney because the legislature never enacted the Canons of Ethics into law? Did she have a fair trial before a master who (with the judge's approval) crassly ignored an express rule of the court prohibiting masters from setting the amount of their own fee? Was the confirmation of the master's report—without opinion—the act of a disinterested and unbiased judge when that judge was deeply involved in highly profitable deals with the master's partner? The Supreme Court of Florida, in denying petitioner's application, has decreed that these questions—considered in the light of the disclosures made during the legislative investigation and impeachment proceedings—may never be reviwed in any forum in Florida.

Is there any justification for immunizing this extraordinarily suspect judgment from the searching light of review? This Court has held that no statement of policy favoring finality of judgments may save a judgment from scrutiny where substantial evidence of fraud is subsequently discovered.[30] Equity has always provided a procedure for review.[31]

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[30] *Hazel-Atlas Glass Co.* v. *Hartford-Empire Co.*, 322 U. S. 238 (1944); *Pickford* v. *Talbott*, 225 U. S. 651, 657, 658 (1912); *Marshall* v. *Holmes*, 141 U. S. 589, 590 (1891); *Marine Ins. Co.* v. *Hodgson*, 7 Cranch 332, 336 (1813).

[31] Bills of Review or Bills in the nature of Bills of Review are the proper procedure in Florida to secure review of judgments in such cases. See *Shaw* v. *Hamm*, 133 Fla. 722, 183 So. 19 (1938); *Miller* v. *Miller*, 149 Fla. 722, 7 So. 2d 9 (1942).

Where substantial evidence has challenged the integrity of a tribunal, courts have hastened to set aside the tainted judgment.[32] Thus, the Court of Appeals for the Second Circuit granted motions or petitions for review where Judge Manton's corrupt participation tainted that court's original judgment.[33]

On April 17, 1958, the Court of Appeals for the District of Columbia Circuit, in the publicized "Miami Channel 10" cases, ordered re-examination [34] of an award of a television channel by the Federal Communications Commission after charges of improper influence exerted upon Commissioner Richard A. Mack by the attorney for the successful applicant, Thurman A. Whiteside (Judge Prunty's former law partner) had come to light during the course of a Congres-

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[32] In *Root Refining Co.* v. *Universal Oil Products Co.*, 169 F. 2d 514 (3rd Cir. 1948), the court concluded that an attorney, one Kaufman, "Was employed or retained by Universal for the purpose and with the expectation that he would exercise upon Judge Davis an improper influence in order to secure favorable judicial action in the *Root* cases" (169 F. 2d at 529). Vacating its former judgment and remanding the case with directions to dismiss, the Court said:

> "By this action, the records of this court and of the District Court will be purged, and there will be no need to consider whether or not in this case Kaufman actually succeeded in exerting an improper influence upon Judge Davis * * *." (169 F. 2d at 541).

[33] *Art Metal Works, Inc.* v. *Abraham & Straus, Inc.*, 107 F. 2d 944 (2d Cir. 1939); *General Motors Corp.* v. *Preferred Electric Wire Corp.*, 109 F. 2d 615 (2d Cir. 1940); *Electric Auto-Lite Co.* v. *P. & D. Mfg. Co.*, 109 F. 2d 566 (2d Cir. 1940); *In re 671 Prospect Ave. Holding Corp.*, 105 F. 2d 960 (2d Cir. 1939); *Schick Dry Shaver* v. *Dictograph Products Co., Inc.* (2d Cir., Docket No. 15162) (not reported). See *United States* v. *Manton et al.*, 107 F. 2d 834 (2d Cir. 1938), cert. den. 309 U. S. 664 (1940).

[34] Citing *Root Refining Co.* v. *Universal Oil Products Co.*, footnote 32 *supra*.

sional investigation.[35] Commissioner Mack and Whiteside had admitted during the investigation that Mack had borrowed substantial sums of money from and had been involved in certain business ventures with Whiteside. The Circuit Court ordered the Commission to hold an evidentiary hearing "concerning the possibility that the award heretofore made may be void *ab initio* * * *."[36]

The disclosure of the Whiteside-Prunty-Holt-Rothenberg alliance in the instant case compels no less a review than those which the courts decreed in "Miami Channel 10" and the other cases cited, *supra*, for in the words of Mr. Justice Roberts, "No fraud is more odious than an attempt to subvert the administration of justice.[37]

III.

Throughout the House investigation and his impeachment trial, Judge Holt contended that his judicial decisions were unaffected by the gifts, favors or loans he received from, or by his business dealings with, the attorneys involved. But due process demands a much higher standard, as this Court has held. In *Tumey* v. *Ohio*, 273 U. S. 510

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[35] *WKAT, Inc.* v. *Federal Communications Commission*, C. A. D. C. (Docket No. 13718, 14021, and 14170; *Eastern Airlines, Inc.* v. *Federal Communications Commission*, C. A. D. C. (Docket No. 13725) Appendix F.

[36] On July 31, 1958, in *Massachusetts Bay Telecasters, Inc.* v. *Federal Communications Commission*, C. A. D. C. (Docket No. 13896) and *Greater Boston Television Corporation* v. *Federal Communications Commission*, C. A. D. C. (Docket No. 13899) the same Circuit Court followed its procedure in the Miami Channel 10 cases by entering a similar order of remand where again it appeared that improper influence might have been exerted against a commissioner.

[37] Concurring in *Hazel-Atlas Glass Co.* v. *Hartford-Empire Co.*, 322 U. S. 238, 251 (1944).

(1927) this Court, finding a denial of due process, unanimously reversed a conviction where the defendant had been tried before the mayor of a town under a statute which permitted the mayor to share in the fines he collected. Under analogous English cases, said Chief Justice Taft, "the slightest pecuniary interest of any officer, judicial or quasi-judicial, in the resolving of the subject matter which he was to decide, rendered the decision voidable."[38] The Chief Justice further stated:

> "There are doubtless mayors who would not allow such a consideration as $12 costs in each case to affect their judgment in it, but the requirement of due process of law in judicial procedure is not satisfied by the argument that men of the highest honor and the greatest self-sacrifice could carry it on without danger of injustice. Every procedure which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear and true between the state and the accused denies the latter due process of law." (273 U. S. at 532)[39]

Answering the argument that defendant was clearly shown to be guilty in any event, this Court stated: "No matter what the evidence was against him, he had the right to have an impartial judge."[40]

As *Tumey* v. *Ohio* recognized, the standards expected and required of the judiciary are too high to admit of fine distinctions as to what degree of influence on a judge's decision might have been made by a possible pecuniary in-

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[38] 273 U. S. at 524.

[39] Quoted by Mr. Justice Black in *Re Murchison*, 349 U. S. 133, 136 (1955).

[40] 273 U. S. at 535.

terest in the result.[1] The basic integrity of the *Tumey* tribunal was never in question. The facts in the instant case are far more compelling. They transcend the "possibility of temptation" and conclusively demonstrate venality and corruption.

IV.

Public confidence in the courts will exist only so long as the integrity of the bench and the bar remains above reproach. Due process cannot survive in a system where judicial conduct is governed by the ethics of the market place.

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[1] The *Tumey* case restates the principle that due process is denied when a tribunal has a pecuniary interest in a case before it. Clearly, a special master has a "pecuniary interest" in fixing his own fees and keeping them hidden from the record. The Supreme Court of Florida has frequently reviewed and reduced the fees allowed special masters in matrimonial actions. *Garlick* v. *Garlick*, Fla. 38 So. 2d 222 (1949); *Rainey* v. *Rainey*, Fla., 38 So. 2d 60, (1948), holding that a special master's fee which Judge Holt had approved "was exorbitant and without support in the record," 38 So. 2d at 61; *Robbins* v. *Robbins*, 160 Fla. 825, 36 So. 2d 786 (1948), reducing to $1,200 a special master's fee of $2,500 allowed by Judge Holt; *Touby* v. *Touby*, Fla. 68 So. 2d 363 (1953), $1,600 master's fee reduced to $750; *Kleinschmidt* v. *Kleinschmidt*, Fla., 66 So. 2d 815 (1953), $3,000 master's fee reduced to $1,500; *Reid* v. *Reid*, Fla., 68 So. 2d 821 (1953). In *Garlick* v. *Garlick*, *supra*, the Court reviewed the amounts of a master's fee and other fees and ordered reductions even though the reasonableness of such fees was not assigned as error on the appeal. See also *City of Miami* v. *Hollis*, Fla., 77 So. 2d 834 (1955), where a master's fee of $3,500 in a non-matrimonial case was reduced to $1,500. Florida authorities thus clearly contemplate a judicial determination of the amount of masters' fees, after all parties have been heard.

Certiorari should be granted in this case because, to quote Mr. Justice Black,

> "tampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society." [42]

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

LOUIS NIZER,
Counsel for Petitioner.

September 16, 1958.

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[42] *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U. S. 238, 246 (1944).

FILE COPY

FILED
SEP 16 1958
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

October Term, 1958

No. 870

SYLVIA SCHINDLER HOLLAND,
Petitioner,

vs.

NORMAN N. HOLLAND,
Respondent.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

Louis Nizer,
Counsel for Petitioner,
1501 Broadway,
New York 36, New York.

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E. Proposed Bill of Review in Circuit Court for Dade County, Florida.

F. Order of Court of Appeals for District of Columbia Circuit dated April 17, 1958 in WKAT et al. v. Federal Communications Commission.

A

ORDER EXTENDING TIME TO FILE PETITION
FOR WRIT OF CERTIORARI

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No.

SYLVIA SCHINDLER HOLLAND,

Petitioner,

vs.

NORMAN NED HOLLAND.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for petitioner,

IT IS ORDERED that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including September 19th, 1958.

/S/ HUGO L. BLACK,
Associate Justice of the Supreme Court of the United States.

Dated this 23d day
of July, 1958.

B

ORDER OF THE SUPREME COURT OF FLORIDA,
APRIL 1, 1958.

IN THE

SUPREME COURT OF FLORIDA

January Term, A. D. 1958

Tuesday, April 1, 1958

SYLVIA SCHINDLER HOLLAND,

Petitioner,

vs.

NORMAN N. HOLLAND,

Respondent.

The petitioner has filed a petition for an order allowing her to file a bill of review or bill in the nature of bill of review in the Circuit Court in Dade County in above entitled cause; and, upon consideration thereof, it is ordered that said petition be and the same is hereby denied.

A True Copy

TEST

/s/ GUYTE P. MCCORD
Clerk, Supreme Court

C

ORDER OF THE SUPREME COURT OF FLORIDA,
MAY 20, 1958

IN THE

SUPREME COURT OF FLORIDA

January Term, A. D. 1958

Tuesday, May 20, A. D. 1958

[SAME TITLE]

On consideration of the Petition for Rehearing filed by Counsel for petitioner,

IT IS ORDERED by the Court that the said petition be, and the same is hereby, denied.

A true copy.

TEST

/s GUYTE P. McCORD
Clerk, Supreme Court

Exhibit C

PETITION FOR LEAVE TO FILE PETITION IN CIRCUIT COURT FOR LEAVE TO FILE BILL OF REVIEW

IN THE

SUPREME COURT OF FLORIDA

[SAME TITLE]

Comes now the petitioner, Sylvia Schindler Holland, and respectfully petitions and prays this Court for leave to file Petition for Leave to File Bill of Review or Bill in the Nature of Bill of Review in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, said Bill of Review or Bill in the Nature of Bill of Review seeking review of Final Decree of a certain cause lately pending in said Circuit Court and entitled Norman N. Holland, Plaintiff, vs. Sylvia Schindler Holland, defendant, and being Chancery Case No. 169465-A, which Final Decree on appeal to this Court was affirmed on the first day of May, A. D. 1957, and Petition for Rehearing den ed on the 5th day of June, A. D. 1957, copy of said Bill of Review or Bill in the Nature of Bill of Review being filed herewith, and together with the Record, Transcript, Exhibits, Briefs and other documents relating to the appeal aforesaid made a part of this Petition by reference.

Petitioner alleges that grounds for this Petition are the matters and things set forth and alleged in the Bill of Review or Bill in the Nature of a Bill of Review filed herewith, and particularly those things set forth in Paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16, said paragraphs alleging in substance the following matters and things which are violative of the Canons of Ethics and in legal effect deprived petitioner of a fair and imp. ial trial, equal protection of the law, and due process of law con-

templated by the Constitution of the State of Florida and of the United States of America, to-wit:

(A) The relationship existing between Judge George E. Holt, Jack D. Burris and Morton Rothenberg in the course of which relationship the said Jack D. Burris and Morton Rothenberg gave, donated and conferred upon the said Judge Holt substantial gifts and entertained said Judge at lavish social events.

(B) The financial relations between Judge George E. Holt and Thurman A. Whiteside, general partner of John Prunty, wherein the said Judge Holt received a tremendous percentage of profits on investments made at the suggestion and invitation of the said Thurman A. Whiteside.

(C) The personal relations between Judge George E. Holt and John Prunty in the course of which the said John Prunty gave, donated and conferred upon the said Judge George E. Holt various gifts and contributions and entertained the said Judge at lavish social events.

(D) The flagrant violation of Rule 10-D of the Circuit Court Rules of the Circuit Court in and for Dade County, Florida, which requires that Master's fees shall be fixed by the court and paid to the Master only upon Court order, the facts in the case at bar being that according to the Report of the Special Master John Prunty, the plaintiff in that case paid the fee of the Special Master who acknowledged receipt thereof; that the said report did not disclose the amount of the fee, the dates when the fee was paid and the amounts of such payments, except that the entire fee was paid sometime prior to the date of filing; that said Judge Holt overruled the exceptions duly taken by the defendant and ratified the payment by the plaintiff to the Special Master of the fee in an undisclosed amount without requiring any disclosure whatever, so as to afford the defendant an opportunity to be fully heard with respect thereto; that said fee of the Special Master was never fixed by the Court and never disclosed as to amount and time of payment.

(E) In the flagrant violation of Rule 10-D of the Circuit Court Rules of the Circuit Court in and for Dade County, Florida, the plaintiff and all of the attorneys participated, to-wit: Plaintiff, Norman N. Holland, and his attorneys of record, Stanley Joel Levine, Morton Rothenberg and Jack D. Burris.

And as further grounds of this Petition, petitioner alleges:

(F) That In the course of the proceedings the intentions of Norman N. Holland in regard to contemplated marriage with Judith H. Wartell was material to the issues and the said Norman N. Holland alleged that he had no plans for said marriage, but in truth and in fact the said Norman N. Holland did file application for license to marry Judith H. Wartell within four (4) days after entry of Final Decree aforesaid, and did on August 4, A. D. 1955, marry the said Judith H. Wartell.

(G) That from inspection and consideration of the record in the divorce case above mentioned, in the light of the facts occurring subsequently, it affirmatively appears:

(1) That plaintiff in said divorce proceedings, to-wit: Norman N. Holland, was not a bona fide resident of the State of Florida but came to the state solely for the purpose of obtaining a divorce to marry Judith H. Wartell.

(2) That the marriage of Norman N. Holland and Judith H. Wartell after the entry of the Final Decree demonstrates conclusively the perjury of the plaintiff Norman N. Holland and the lack of bona fides in said divorce proceeding.

The enumeration of the above grounds is not made for the purpose of limiting petitioner's grounds for relief thereon but for the purpose of directing the Court's at-

tention to the grounds upon which petitioner relies for relief in this cause and which are set forth more fully in the Bill of Review or Bill in the Nature of Bill of Review filed herewith, the allegations of which Bill of Review or Bill in the Nature of Bill of Review are made a part hereof by reference to the same extent as if copied herein at length.

Petitioner alleges that as is more fully and particularly alleged in said Bill of Review or Bill in the Nature of Bill of Review, the above ar foregoing matters were in large part unknown to her at the time of the entry of the Final Decree complained of and could not have been known to her by the exercise of reasonable diligence and that in large measure the same were disclosed and revealed gradually and the full knowledge thereof was revealed in the record of the impeachment trial of Judge E. Holt, which complete records were only recently available to petitioner.

WHEREFORE, petitioner respectfully prays that this Court will give her leave to file Petition for Leave to File Bill of Review or Bill in the Nature of Bill of Review in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, to review Final Decree in a certain cause lately pending in said Circuit Court entitled NORMAN N. HOLLAND, Plaintiff, vs. SYLVIA SCHINDLER HOLLAND, Defendant, and being Chancery Case No. 169465-A.

/s/ Mrs. SYLVIA S. HOLLAND
Petitioner

(Sworn to February 13, 1958.)

E-1

PROPOSED BILL OF REVIEW IN CIRCUIT COURT FOR DADE COUNTY, FLORIDA

IN THE

CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT

IN AND FOR DADE COUNTY, FLORIDA

In Chancery—Case No. ——

—o—

SYLVIA SCHINDLER HOLLAND,

Plaintiff,

vs.

NORMAN N. HOLLAND,

Defendant.

—o—

Comes now the plaintiff, Sylvia Schindler Holland, a resident of Nassau County, State of New York, and whose address is 29 Thompson Drive, East Rockaway, New York, having obtained leave of the Supreme Court of the State of Florida to bring petition for leave to file this Bill of Complaint in the Nature of a Bill of Review with the Circuit Court in and for Dade County, Florida, and by leave of said Circuit Court brings this her Bill of Complaint in the Nature of a Bill of Review against the defendant, Norman N. Holland, whom plaintiff contends is a citizen and resident of the County of Nassau and State of New York, but who is temporarily sojourning in Dade County in the State of Florida, and whose address is 235 83rd Street, Miami Beach, Florida, and thereupon complains and says:

1.

That the plaintiff herein is a citizen and resident of the County of Nassau in the State of New York, and that the defendant herein is a citizen and resident of the County of Nassau and State of New York.

2.

That the parties hereto were married on the 8th day of May, A. D. 1935, in Bellfonte, County of Millisburgh, State of Pennsylvania, and lived together as man and wife in the State of New York until on or about the 31st day of October, 1953, at which time the defendant wrongfully abandoned the plaintiff and the two children born of the marriage of plaintiff and defendant, to-wit: Zachary Stephen Holland, then aged 15 years, and Benay Holland, then aged 13 years, without any fault on the part of the plaintiff and without any cause, reason or justification.

That thereafter the defendant absconded from his domicile in the State of New York and came into the State of Florida and County of Dade for the sole purpose of fraudulently obtaining a divorce from the plaintiff as part of a fraudulent plan and scheme made in the State of New York between defendant and one Judith H. Wartell, a married woman who was then living with her husband and their two infant children in the State of New York, but with whom, for upwards of a year theretofore, defendant had engaged in an adulterous course of conduct, and pursuant to said plan and scheme defendant was to institute a divorce proceeding and obtain a decree of divorce against plaintiff herein, and the said Judith H. Wartell was to institute a divorce proceeding and obtain a decree of divorce against her then husband, whereupon the defendant herein and the said Judith H. Wartell were to marry each other, and on the 24th day of May, A. D. 1954, in pursuance of the said plan and scheme the defendant herein instituted divorce proceedings against the plaintiff in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, by filing in said court a Bill of Complaint; that thereafter, and on June 23, 1954, the plaintiff herein moved before the Senior Circuit Judge, the Honorable George E. Holt, to dismiss the said Bill of Complaint filed in said divorce proceedings, upon the ground that the defendant's purported residence in Florida was fraudulent and was established for the sole purpose of instituting an action for a di-

vorce against the plaintiff herein and thereby to perpetrate a fraud upon the plaintiff herein and upon the courts of the States of Florida and of New York, in which last mentioned forum there was then pending an action between the parties herein brought by the plaintiff herein for a judgment of separation from the bed and board of the defendant herein upon the grounds of the adultery of the defendant herein with the said Judith Wartell, cruel and inhuman treatment, abandonment, and failure to adequately support the plaintiff herein and their two children, and for other incidental relief, including, but not limited to custody of the children and suitable alimony; that the said motion having been denied by the said Judge Holt without prejudice and with leave to the plaintiff herein to plead the aforesaid matters in her Answer to said Bill of Complaint; that thereafter plaintiff herein filed a conditional appearance, and, reserving her rights arising out of the lack of jurisdiction of the said Court over the parties and the subject matter of the action because of the lack of bona fides of residence in the State of Florida of the defendant herein, to contest the jurisdiction of said court over the parties and subject-matter, filed her defense to said cause, said defenses consisting in substance of a complete denial of each and every allegation as to the jurisdiction of the Court over the parties and subject-matter of the cause, and each and every ground for divorce alleged in the said Bill of Complaint, and alleging certain affirmative defenses as follows:

"XII.

"Further answering the Complaint herein, the Defendant alleges that when the parties were married on the 8th day of May, 1935 in the State of Pennsylvania they were temporarily sojourning in that state as students attending Penn. State College, but that both were domiciled in the State of New York; that after returning to the State of New York from Pennsylvania upon the termination of their college careers, they continued to be domiciled in and

residents of the State of New York; that any purported residence established by the Plaintiff in the State of Florida in recent months is not in good faith but is an attempt on the part of the Plaintiff to perpetrate a fraud upon the Defendant and upon the courts of the States of Florida and New York.

XIII.

That although the Defendant has been a devoted, affectionate and dutiful wife and has done everything within her means to insure the Plaintiff's happiness, the Plaintiff became enamored of another woman whose name is well known to the plaintiff.

In the early part of 1953 the Plaintiff began to make public demonstrations of his affection for the said other woman. Matters progressed to the point where the said other woman would even visit the parties to this cause in their own home. The Plaintiff paid less and less attention to the Defendant and began to hold clandestine meetings with the said other woman. When the Defendant remonstrated with the Plaintiff and pointed out to him that his conduct was becoming noticeable to friends of the family and causing her embarrassment and humiliation, he resented the criticism.

On or about the 29th day of August, 1953 the Plaintiff became so furious that he struck the Defendant several times on her face with such violance that she bore bruises for several days.

XIV.

The Plaintiff, during the year 1953, absented himself from his home more and more, staying out until the early morning hours, and seemed to lose all interest in his home and his family; in fact, where he had been a devoted husband and father, he became very ill-tempered toward the children of the parties, criticizing everything they did.

In the month of August, 1953 Zachary Steven Holland, the son of the parties herein, suffered an accident which required surgery, and although the Defendant was greatly in need of the Plaintiff's presence and assistance, the Plaintiff delayed coming to the hospital for a matter of hours.

XV.

By the month of June, 1953 the Plaintiff was seeing the other woman mentioned hereinabove with such frequent regularity that he discontinued any marital relations with the Defendant and even refused to talk to the Defendant except to criticize her without justification; and about the 1st of October, 1953 the Plaintiff informed the Defendant that he no longer loved her and in fact was going to leave her, and finally on the 31st day of October, 1953 the Plaintiff left the home of the parties never to return.

XVI.

Although the Plaintiff had been accustomed to providing his family with cash, food and other benefits of a value of approximately Four Hundred ($400.00) Dollars a week, after the abandonment referred to immediately hereinabove the Plaintiff provided his family with the sum of One Hundred ($100.00) Dollars a week and during the month of January, 1954, reduced this amount to Seventy-Five ($75.00) Dollars, and at the same time caused the termination of all charge accounts which the Defendant had theretofore enjoyed.

XVII.

The Plaintiff committed adultery with the other woman hereinabove referred to, on various occasions during the year of 1953 at various places in the Greater New York area. The Plaintiff had surrep-

titious meetings with the said other woman and accompanied her to places not accessible to the Defendant, and in particular on November 29, 1953, November 30, 1953, December 6, 1953, December 7, 1953. On other occasions the Plaintiff had clandestine meetings with the said other woman in Forest Park, New York, on November 22, 1953, and December 13, 1953, on which last named date he was apprehended in the act of adultery.

XVIII.

The Defendant is informed and believes and therefore avers that both the Plaintiff and the aforesaid other woman have told numerous friends that the Plaintiff herein was coming to Florida to establish a residence for the purpose of procuring a divorce so that he could marry the said other woman.

XIX.

The Defendant is further informed and believes and therefore avers that the Plaintiff, as a part of a studied plan to withdraw support from the Defendant and the minor children of the parties, has entered into purported contracts with his mother to dispose of very valuable intangible personal property for a wholly inadequate consideration, thereby defrauding the Defendant and her children of the support to which they are entitled.

XX.

The Plaintiff owns stock in various family corporations, which provided him with a cash income in excess of Sixteen Thousand ($16,000.00) Dollars a year, and other benefits worth approximately the same amount. The Plaintiff has openly admitted the sale of said stocks hereinabove referred to, to his mother pursuant to a plan whereby he will receive

only Seventy-Five Hundred ($7500.00) Dollars a year for ten (10) years." (Answer, Paragraphs XII through XX, inclusive),

and thereafter certain proceedings were had in said cause resulting in the entry of final decree in favor of the defendant herein, Norman N. Holland, and against the plaintiff herein, Sylvia Schindler Holland, and granting unto the said Norman N. Holland a decree of divorce and dissolving the bonds of matrimony theretofore existing between the parties, said final degree of divorce having been entered on the 25th day of July, A. D. 1955, all of said proceedings being styled "Norman N. Holland, Plaintiff, vs. Sylvia Schindler Holland, Defendant", and lately pending in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, and being Chancery Number 169465A, all of said proceedings aforesaid, including, but not limited to, pleadings, notices, orders, reports, exhibits, documents, and instruments, are made a part hereof by reference as Plaintiff's Exhibit "A", the same as if set forth herein at length. (For purposes of brevity and the convenience of the Court, the entire file and all documents and papers therein are made a part hereof by reference as Plaintiff's Exhibit "A", and hereafter any particular paper, document, exhibit or other paper in said file will be designated as follows: Plaintiff's Exhibit "A-1", Plaintiff's Exhibit "A-2", etc. The exhibits contained in said file were previously introduced by the parties as exhibits in the status which they occupied in said proceedings, but said designations will be hereafter ignored and all papers in said proceedings will be referred to herein as the exhibits of plaintiff herein and appropriately lettered and numbered. Other papers, documents and exhibits not contained in the above proceedings and which will be referred to and made a part hereof by reference will be referred to and designated as Plaintiff's Exhibits "B", "C", "D" etc.)

3.

Plaintiff further alleges that said cause and the judgment and decree therein entered were appealed to the Supreme Court of Florida, and that said judgment and decree was affirmed by said Court without opinion on the 1st day of May, A. D. 1957, and thereafter a petition for rehearing was filed and said petition was denied, also without opinion, on the 5th day of June, A. D. 1957, the mandate and opinion of said Court being filed in the case papers in the Circuit Court of Dade County, Florida, and hereby specifically made a part hereof by reference as Plaintiff's Exhibit "A-12".

4.

Plaintiff alleges that certain matters and things transpired and existed during the period prior to, during and subsequent to the proceedings in the cause in the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Dade County, above referred to, which matters and things were then unknown to plaintiff herein and which could not have come to the knowledge of plaintiff herein by the exercise of reasonable diligence and were not and could not be presented to the Court on the trial of said cause, the substance of said matters and things being set forth hereinafter.

5.

Plaintiff alleges that the defendant herein, Norman N. Holland, plaintiff in the former proceedings, came to Florida with the sole intent to fraudulently obtain a divorce from plaintiff herein, and thereafter to marry the said Judith Wartell, a married woman, with whom, for upwards of a year theretofore, he had been engaged in an adulterous course of conduct, all of which was in pursuance of a common plan and scheme theretofore made between defendant herein and the said Judith Wartell to divorce their respective spouses and to marry one another, all of which is

hereinabove more fully alleged, and, pursuant to said fraudulent intent and scheme, retained as counsel Honorable Stanley Joel Levine who remained as counsel for said defendant herein throughout the proceedings and review of said proceedings above referred to, and further in pursuance of said fraudulent intent and scheme, the said Norman N. Holand, the defendant herein, established fraudulent residence in Dade County, Florida, and instituted divorce proceedings against the plaintiff herein, Sylvia Schindler Holland, which Bill of Complaint has been made a part hereof by reference as a part of the proceedings in said divorce action; that prior to, at or shortly after the institution of said proceedings in the Circuit Court in Dade County, Florida, the defendant herein, Norman N. Holland, retained as other and additional counsel, the firm of Rothenberg and Burris, the said partnership having as its members Honorable Morton Rothenberg and Jack D. Burris; that said cause was heard and the proceedings had and decree entered by the said Honorable George E. Holt, senior Circuit Judge of the Circuit Court in and for Dade County, Florida; that upon the filing of the Answer to the Bill of Complaint setting forth denials of the material allegations of said Bill of Complaint and the aforesaid defenses thereto by plaintiff herein as defendant in said former divorce proceeding, the matter was referred by the Honorable George E. Holt, hereafter referred to as Judge Holt, to Honorable John Prunty, a then practicing attorney in said county, who as a general partner of the law firm of Yonge, Whiteside & Prunty, practiced in the court of said county over which Judge Holt presided; that thereafter the said John Prunty, as Special Master, heard the testimony and proofs and filed his report recommending a decree in favor of the defendant herein, who was the plaintiff in the said former divorce proceedings, Norman N. Holland, and against the plaintiff herein who was the defendant in the said former divorce proceedings, Sylvia Schindler Holland; that thereafter the said Judge Holt

overruled the Exceptions duly taken by the plaintiff herein, who was the defendant in the said former divorce proceedings, to the said Report filed as aforesaid by the said John Prunty as Special Master and entered a decree adopting and confirming said Master's Report and granting a divorce against the plaintiff herein and in favor of the defendant herein; that all of said matters and things were known to the plaintiff herein at the time of the said former divorce proceedings, but the following matters and things specifically set forth hereafter were unknown to the plaintiff herein and could not have been known by the exercise of reasonable diligence, but which if known and presented to said Circuit Court and to the Supreme Court of the State of Florida on appeal would have resulted or should have resulted in the denial of a divorce to the defendant herein, Norman N. Holland, and the decree would have been or should have been entered in favor of the plaintiff herein, and the defendant in said former proceedings, Sylvia Schindler Holland, dismissing the Bill of Complaint in said former proceedings, said matters and things being more specifically set forth as follows:

(a) That it is now known to the plaintiff herein and was unknown to her at the time of the said former proceedings, that the said Judge Holt and the attorneys of record for the defendant herein, who was the plaintiff in the said former divorce proceedings, Norman N. Holland, to wit: the said Morton Rothenberg and the said Jack D. Burris, enjoyed a close personal relationship for many years with Judge Holt, and that it had been the custom of said Rothenberg and Burris to give, donate and confer upon the said Judge Holt gifts and to make substantial political contributions to Judge Holt during the periods of time that he was running for election and reelection, and that, over a period of years, it had been the custom and practice of the said Judge Holt to accept favors and gifts from the said Rothenberg and Burris and to frequently meet with them on

social occasions, having on many occasions been the guest of the said Rothenberg at lavish social events, all of which matters and things were unknown to the plaintiff herein at the time of said former proceedings and could not have been known by the exercise of reasonable diligence;

(b) That it was likewise unknown to the plaintiff herein, and could not have been known by the exercise of reasonable diligence that, at the time of the appointment by the said Judge Holt of the said John Prunty, as Special Master in said former proceedings, the said Judge Holt was involved in a financial transaction with Honorable Thurman A. Whiteside, the then general law partner of the said John Prunty, who had full knowledge of said financial transaction, and which financial transaction, in substance, purportedly involved an alleged investment by the said Judge Holt of approximately $450.00 for the purchase of an interest in certain airplane cylinders and which airplane cylinders were later alleged disposed of at an admitted profit to Judge Holt of some 900 percent on his alleged investment, the said Judge Holt later admittedly receiving from the said Thurman A. Whiteside the sum of approximately $3,981.73 as the proceeds of his alleged investment of $450.00, a substantial part of said alleged proceeds and profit having been paid by Thurman A. Whiteside long prior to the time when said airplane cylinders were allegedly sold and paid for by the alleged purchaser; that the said participation by the said Judge Holt was secret, except as to the said Thurman A. Whiteside and the said John Prunty; that the said participation by the said Judge Holt in said transaction was not recorded in the books of account of the said Thurman A. Whiteside, or in any other then current memorandum of said transaction, and no part of said alleged proceeds and profits that had been received by the said Judge Holt were reported by the said Judge Holt in his Federal Income Tax Return for the year during which said alleged proceeds and profits were so received.

but said alleged proceeds and profits were so reported in the said Judge Holt's Federal Income Tax Return for a year subsequent to the year in which said profits and proceeds were received but only after the commencement of investigations into the conduct and affairs of the said Judge Holt by the Grand Jury of Dade County for the Fall Term A. D. 1955, and succeeding Grand Juries in said county, by the Board of Governors of The Florida Bar, and by a special committee of the House of Representatives of the State of Florida to investigate charges of misconduct and unethical practices in office of the said Judge Holt, all of which matters and things were unknown to the plaintiff herein at the time of the said former divorce proceedings and could not have been known by the exercise of reasonable diligence, although it is now known to the plaintiff herein that the said purported financial transaction was in progress before and during the entire period during which said former divorce proceedings were pending before the said Judge Holt.

Plaintiff herein further alleges that the said Thurman A. Whiteside, the then general law partner of the said John Prunty, who was permitted by Judge Holt to receive and accept undisclosed amounts of money from the defendant herein, and who was the plaintiff in the said former divorce proceedings, not only was paying large sums of money to the said Judge Holt during the pendency of said former proceedings, as a result of the said alleged financial transactions, but was also active and instrumental in securing for the said Judge Holt special favors in relation to two automobiles purchased by the said Judge Holt, in that the said Thurman A. Whiteside did secure through divers means, contacts and influence, substantial reductions in the purchase price of said automobiles to the end that the said Judge Holt, as a result of the aforesaid activities of the said Thurman A. Whiteside, did save substantial sums of money in the purchase of the said two automobiles, all of which matters and things were known to the said Judge

Holt and to the said John Prunty, but were unknown to the plaintiff herein at the time of the former divorce proceedings, and which matters and things could not have been known to the plaintiff herein by the exercise of reasonable diligence.

(c). That the plaintiff herein has discovered and now knows that, for a long period of time, the said Judge Holt and the said John Prunty had been and were close personal friends for a period of upwards of twenty-five years, and that it was the custom and practice of the said Judge Holt and the said John Prunty, although one, to-wit: the said Judge Holt, occupied the judicial position of Circuit Judge and the other, to-wit: the said John Prunty, then was a general partner of the law firm of Yonge, Whiteside & Prunty, and was then a practicing lawyer, actively engaged in the practice of law before the said Judge Holt, to exchange gifts, and frequently to visit in each other's homes, and to go together to lavish social affairs, all of which matters and things were unknown to the plaintiff herein during the time of said former proceedings and could not have been known through the exercise of reasonable diligence.

(d) That it was likewise unknown to the plaintiff herein and could not have been known by the exercise of reasonable diligence that the said Judge Holt, in violation of his oath as an attorney and of his oath as a Circuit Judge, and the said John Prunty, in violation of his oath as an attorney at law, did not recognize the Canons of Ethics adopted by the Supreme Court of Florida governing the conduct of Judges, special masters and attorneys in this state, to be the law of the State of Florida and binding upon them, but the said Judge Holt and the said John Prunty did believe that they could, and as in this Bill of Complaint in the Nature of a Bill of Review is alleged by the plaintiff herein, they did violate and ignore with impunity, the said Canons of Ethics, during and with respect to the said former divorce proceedings.

(e) Plaintiff alleges that, as to the matters and things alleged in this sub-paragraph, she had knowledge during the progress of the said former divorce proceedings since they transpired and occurred as matters of record in said cause, but could not understand nor realize the significance of said matters and things due to her lack of knowledge of other matters and things set forth elsewhere in other sub-paragraphs of this Paragraph 5, said matters and things being in substance as follows:

That Rule 10-D of the Circuit Court Rules in and for Dade County, Florida, provides in part, as follows:

> "Masters shall report the amount of all funds received," and "No Master shall have authority to set his own fee, but may suggest to the Court what in his or her opinion may be the reasonable amount thereof."

That plaintiff herein, who was the defendant in the said former divorce proceedings, and her attorneys in the said proceedings, presumed and understood, as a matter of right, that, upon the presentation of the report of the said Special Master, the said John Prunty, to the said Judge Holt, there would be included in the said report, in accordance with the provisions of the said Rule 10-D of the said Circuit Court, the Canons of Ethics, and of good and ethical practice, a recommendation as to the reasonable fee to be allowed to the said John Prunty as Special Master in the said former divorce proceedings and that, after full disclosure in the said report of the amount of the fee recommended by the said John Prunty, as Special Master, and after affording to the plaintiff full opportunity to be heard with respect to the said fee and all of the facts and circumstances relating thereto, and after consideration of said recommendation and all other matters pertinent thereto, the said Judge Holt would fix a reasonable fee for the services of the said John Prunty as Special Master, but

that when the said Special Master's report was filed and submited to the said Judge Holt, there appeared in the recomendations of the Special Master the recommendation that the Court order and direct the plaintiff therein to pay the fee of the said Special Master for his services in the cause; that the said report of the said Special Master was signed at the end thereof by the said John Prunty as Special Master and that immediately below said signature of the said John Prunty, and also as part of the said report, there appears the additional matter to the effect that the fees of the said Special Master for his services in the cause had been paid by the plaintiff in the said cause, who is the defendant herein, and that receipt of the said fees was acknowledged by the said John Prunty as Special Master, all of which matters and things were contrary and repugnant to and violative of the said Circuit Court Rule 10-D, the Canons of Ethics adopted by the Supreme Court of Florida governing the conduct of Judges, Masters and Attorneys; that in said former divorce proceedings, the Master had failed to make a recommendation to the said Court as to a reasonable fee, and the said Court, the said Judge Holt presiding, had failed to inquire into the matter of the said fee paid by the defendant herein, who was the plaintiff in the said prior divorce proceedings, to the Special Master, as aforesaid, or to direct that the amount of the said fee and the time and place of payment thereof and all of the circumstances relevant thereto be reported to the said Court by the defendant herein, his said attorneys and the said Special Master, and to the plaintiff herein, who was the defendant in the said former divorce proceedings, although the said Court's attention had been specifically directed thereto by exception duly taken by the plaintiff herein, who was the defendant therein, specifically addressing objection to the said irregular and improper and highly prejudicial procedure in relation to the payment to the Special Master by the plaintiff therein of an undisclosed amount of money at an undisclosed time and undis-

closed place, which exception was denied and overruled by the said Judge Holt, and that the said Court adjudicated the reasonableness of the said fee, although it appears of record that at some undisclosed time, at some undisclosed place, while the said Special Master, John Prunty, was hearing said case and cause, and had said case and cause under consideration, the defendant herein, who was the plaintiff in the said former divorce proceedings, had paid to said Special Master an undisclosed amount of money, contrary to the said Rule aforesaid, contrary to the Canons of Ethics adopted by the Supreme Court of Florida Governing the Conduct of Judges and Attorneys in such cases, and contrary to proper and ethical practice and procedure; that the plaintiff herein, who was the defendant therein, was thereby deprived of her right to be heard thereon, and of a fair and impartial trial and of the equal protection of the laws, and of the benefits of due process of law guaranteed to the plaintiff herein by the laws of the State of Florida, the Constitution of the State of Florida, and the Constitution of the United States of America, and more particularly Sections 1, 4 and 12 of the Declaration of Rights of the Constitution of the State of Florida, and Section 1 of the Fourteenth Amendment to the Constitution of the United States of America.

6.

Plaintiff alleges that the matters and things set forth and alleged in the preceding paragraphs which were unknown to her at the time of the said former divorce proceedings and which could not have been known through the exercise of reasonable diligence, now clearly demonstrate the venality, bias and prejudice of the said Judge Holt, as the presiding Judge, and of the said John Prunty, as Special Master appointed by the said Judge Holt, in said former proceedings, in favor of the defendant herein, who was the plaintiff in the said former proceedings, and

against the plaintiff herein, who was the defendant in the said former proceedings, at the instance and instigation and as a direct result of the corrupt, debauching and unethical practices in and relating to the said former divorce proceeding on the part of the said George E. Holt, as Judge and his appointee, the said John Prunty as Special Master in said former proceeding, and the said Stanley Joel Levine, Morton Rothenberg and Jack Burris, as the attorneys for the defendant herein, who was the plaintiff in the former proceeding, and the defendant herein who was the plaintiff in the said former proceeding, which was contrived by all of the aforesaid persons, except the plaintiff herein, and did deprive the plaintiff herein of a fair and impartial trial and which resulted in the venal, biased and prejudiced report filed by the Special Master with the said Judge Holt in the said former proceedings in favor of the defendant herein, and the venal, biased and prejudicial ratification of the said Master's report, and also of the payment by the defendant herein and the acceptance by the said John Prunty, as Special Master, of a fee in an undisclosed amount in said former divorce proceedings and during the pendency of the said former divorce proceedings before the said John Prunty, as Special Master, and prior to the filing of the said Special Master's Report, and overruling the exceptions to the said Special Master's Report duly taken by the plaintiff herein, who was the defendant in said former divorce proceedings, and the granting of the said divorce decree in the said former proceedings in favor of the defendant herein and against the plaintiff herein, thereby arbitrarily, capriciously and wrongfully terminating the marriage ties then existing between the plaintiff herein and the defendant herein, who were, respectively, the defendant and the plaintiff in the said former divorce proceedings, thereby publicly casting a cloud upon the good name of the plaintiff herein and depriving the plaintiff herein of her rights flowing from said mar-

riage, including, but not limited to, her rights, both present and inchoate, accorded to a wife under and by virtue of the laws of the State of Florida and of the State of New York, in which last mentioned state both of the parties herein and their two children were, at all times, and still are domiciled, of maintenance and support, in property and in the estate of the defendant herein, as husband of the plaintiff herein, upon his death, without due process of law and without affording to the plaintiff herein the equal protection of the laws and the fair and impartial trial guaranteed to the plaintiff herein by the laws of the State of Florida, the Constitution of the State of Florida and the Constitution of the United States of America, and more particularly Sections 1, 4 and 12 of the Declaration of Rights of the Constitution of the State of Florida and Section 1 of the Fourteenth Amendment to the Constitution of the United States of America, in that it now appears that Judge Holt, without first informing, but keeping secret from the plaintiff herein, who was the defendant in the said former divorce proceedings, and thereby denying to the plaintiff herein an opportunity to take appropriate legal proceedings to effect the disqualification and removal of the said Judge Holt, as the presiding Judge, and the said John Prunty as Special Master in the said former divorce proceedings, sat and presided in said cause, well knowing:

(a) That the said Judge Holt and the attorneys of record for the defendant herein, Norman N. Holland, who was the plaintiff in the former divorce proceedings, to-wit: Morton Rothenberg and Jack D. Burris, enjoyed a close personal relationship for many years, and that it had been the custom of the said Rothenberg and Burris to give, donate and confer upon the said Judge Holt, gifts and to make substantial political contributions to the said Judge Holt during the periods of time during which he was running for election and re-election and that, over a period of years, it had been the custom and practice of the said

Judge Holt to accept favors and gifts from the said Rothenberg and Burris and to frequently meet with them on social occasions, on many occasions having been the guest of Rothenberg at lavish social events, all of which was in violation of and repugnant to the Canons of Ethics adopted by the Supreme Court of Florida, governing the conduct of Judges and attorneys in this state.

(b) That, at the time of the appointment by the said Judge Holt of Honorable John Prunty as Special Master in said former divorce proceedings, the said Judge Holt admittedly was involved in an alleged financial transaction with Honorable Thurman A. Whiteside, the then general partner of the said John Prunty, who had full knowledge of said alleged financial transaction, and which financial transaction, in substance, purportedly involved the alleged investment by the said Judge Holt of approximately $450.00 for the purchase of an interest in certain airplane cylinders and which airplane cylinders were allegedly disposed of at an alleged profit to the said Judge Holt of some 900% of his alleged investment, the said Judge Holt later admittedly receiving from the said Thurman A. Whiteside the sum of approximately $3,981.73 as the proceeds of his alleged investment of $450.00, a substantial part of said alleged proceeds and profit having admittedly been paid by the said Thurman A. Whiteside long prior to the time when the said airplane cylinders were allegedly sold and paid for by the alleged purchaser, but no part of said alleged proceeds and profit were reported by the said Judge Holt in his federal income tax return during the year during which said alleged proceeds and profit were received, the said alleged proceeds and profit being so reported in Judge Holt's federal income tax return long thereafter and only after the commencement of an investigation into the conduct and affairs of the said Judge Holt by the Grand Jury of Dade County for the Fall Term, A. D. 1955 and succeeding Grand Juries in said county, and by the Board

of Governors of The Florida Bar and by a special committee of the House of Representatives of the Legislature of the State of Florida, to investigate charges of misconduct and unethical practices in office of the said Judge Holt; that the said purported financial transaction was in progress before and during the entire period during which the said former divorce proceedings were pending before the said Judge Holt; that the said Thurman A. Whiteside, the then general partner of the said John Prunty, who was permitted by Judge Holt to receive and accept undisclosed amounts of money in violation of Rule 10-D of the Rules of the Circuit Court of Dade County, from the defendant herein, who was the plaintiff in the said former divorce proceedings, not only was paying large sums of money to the said Judge Holt during the pendency of said former divorce proceedings as a result of the said alleged financial transactions, but was also active and instrumental in securing for the said Judge Holt special favors in relation to two automobiles purchased by the said Judge Holt, in that the said Thurman A. Whiteside did secure through divers means, contacts and influence, substantial reductions in the purchase price of said automobiles to the end that the said Judge Holt, as a result of the activities of the said Thurman A. Whiteside, did save substantial sums of money in the purchase of said two automobiles, all of said matters and things being known to the said Judge Holt and to the said John Prunty, and all of which was in violation of and repugnant to the Canons of Ethics adopted by the Supreme Court of Florida governing the conduct of Judges and attorneys in this state;

(c) That, for a long period of time, the said Judge Holt and the said John Prunty had been and were close personal friends for a period of upwards of 25 years, and that it was the custom and practice of the said Judge Holt and the said John Prunty, although one, to-wit: the said Judge Holt, occupied the judicial position of Circuit Judge,

and the other, to-wit: the said John Prunty, then was a general partner with the said Thurman A. Whiteside of the law firm of Yonge, Whiteside & Prunty, and was then a practicing lawyer, actively engaged in the practice of law before the said Judge Holt, to exchange gifts, and frequently to visit in each other's homes and go together to lavish social affairs;

(d) That, Rule 10-D of the Circuit Court Rules in and for Dade County, Florida, provides, in part, as follows:

> "Masters shall report the amount of all funds received," and "No Master shall have authority to set his own fee, but may suggest to the court what in his or her opinion may be the reasonable amount thereof."

That the plaintiff herein, who was the defendant in the said former divorce proceedings, and her attorneys in the said proceedings, as a matter of right, presumed and understood that, upon the presentation of the report of the said Special Master, the said John Prunty, to the said Judge Holt, there would be included in the said report, in accordance with the provisions of the said Rule 10-D of the said Circuit Court, the Canons of Ethics, and of good and ethical practice, a recommendation as to the reasonable fee to be allowed to the said John Prunty, as Special Master in the said former divorce proceedings, and that, after full disclosure in the said report of the amount of the fee recommended by the said John Prunty, as Special Master, and after affording to the plaintiff full opportunity to be heard with respect to the said fee and all of the facts and circumstances relating thereto, including, but not limited to the amount thereof and the time and place of payment thereof, and, after consideration of the said recommendation and all other matters pertaining thereto, the said Judge Holt would fix a reasonable fee for the services of the said John Prunty as Special Master, but that when the said Special Master's Report

was filed and submitted to Judge Holt there appeared in the recommendations of the Special Master the recommendation that the Court order and direct the plaintiff therein to pay the fee of the said Special Master for his services in the cause; that the said report of the said Special Master was signed at the end thereof by the said John Prunty, as Special Master, immediately below said signature of the said John Prunty, and also as part of the said report, there appears the additional matter to the effect that the fees of the said Special Master, for his services in the cause had been paid by the plaintiff in the said cause who is the defendant herein, and that receipt of the said fees was acknowledged by the said John Prunty as Special Master, all of which matters and things were contrary and repugnant to and violative of the said Circuit Court Rule 10-D, the said Canons of Ethics adopted by the Supreme Court of Florida governing the conduct of Judges and attorneys, in that in said former divorce proceedings, the Master had failed to make a recommendation to the said Court as to a reasonable fee, and the said Court, the said Judge Holt presiding, had failed to inquire into the matter of the said fee paid by the defendant herein, who was the plaintiff in the said prior divorce proceedings, to the Special Master, as aforesaid, or to direct that the amount of the said fee and the time and place of payment thereof and all of the circumstances relevant thereto be reported to the said Court by the defendant herein, his said attorneys and the said Special Master and to the plaintiff herein who was the defendant in the said former divorce proceedings, although the said Court's attention had been specifically directed thereto by exception duly taken by the plaintiff herein, who was the defendant therein, specifically addressing objection to the said irregular and improper and highly prejudicial procedure in relation to the payment to the Special Master by the plaintiff therein of an undisclosed amount of money at an undisclosed time and undisclosed place, which exception was denied

and overruled by the said Judge Holt, and that the said Court adjudicated the reasonableness of the said fee, although it appears of record that at some undisclosed time, at some undisclosed place, while the said Special Master, John Prunty, was hearing said case and cause, and had said case and cause under consideration, the defendant herein, who was the plaintiff in the said former divorce proceedings, had paid to said Special Master an undisclosed amount of money, contrary to the said rule aforesaid, contrary to the Canons of Ethics adopted by the Supreme Court of Florida governing the conduct of Judges, Special Masters and Attorneys in such cases, and contrary to proper and ethical practice and procedure; that the plaintiff herein, who was the defendant therein, was thereby deprived of her right to be heard thereon, and of a fair and impartial trial, and of the equal protection of the laws, and of the benefits of due process of law guaranteed to the plaintiff herein by the laws of the State of Florida, the Constitution of the State of Florida; and the Constitution of the United States of America, and more particularly Sections 1, 4 and 12 of the Declaration of Rights of the Constitution of State of Florida, and Section 1 of the Fourteenth Amendment to the Constitution of the United States of America.

(e) That the said Judge Holt, in violation of his oath as an Attorney and of his oath of office as a Circuit Judge, and the said John Prunty, in violation of his oath as an Attorney-at-Law, did not recognize the Canons of Ethics adopted by the Supreme Court of Florida governing the conduct of Judges, Special Masters and Attorneys in this state, to be the law of the State of Florida and binding upon them, but the said Judge Holt and the said John Prunty did believe that they could, and, as in this Bill of Complaint is alleged by the plaintiff herein, they did violate and ignore, with impunity, the said Canons of Ethics, during and with respect to the said former divorce proceedings.

7.

Plaintiff herein further alleges that certain other matters and things which have transpired subsequent to the entry of the said decree of divorce in said former proceedings aforesaid which demonstrate and prove that the said former divorce proceedings were fraudulent in their inception and constituted a fraud upon the said Court in that said decree of divorce was obtained by the defendant herein, Norman N. Holland, as plaintiff in the said former divorce proceedings, by perjured testimony on the part of and by Norman N. Holland, defendant herein and plaintiff in said former divorce proceedings, and testimony adduced through witnesses called in his behalf, said perjury consisting of but not being limited to, sworn testimony and statements to the effect and in substance that he was domiciled in the State of Florida, and that he was not induced to institute said former divorce proceedings nor motivated by any desire to terminate his said marriage with the plaintiff herein in order to marry one Judith H. Wartell, and further to the effect and in substance that he, the said defendant herein and plaintiff in the said former divorce proceedings, was not in love with the said Judith H. Wartell, had no plans or intentions of marrying the said Judith H. Wartell, and had not discussed any proposed marriage or made any offer of marriage to the said Judith H. Wartell, the said defendant herein, Norman N. Holland, specifically swearing and alleging in his sworn testimony in the said former divorce proceedings that he was a domiciliary of the State of Florida and that he had no plans for said marriage with the said Judith H. Wartell and was not in love with her, all of which sworn testimony and statements were material to the issues in the said former divorce proceedings and were particularly relevant and material and vital to the defense of plaintiff herein, who was the defendant in the said former divorce proceedings. And plaintiff alleges that the said testimony of the

defendant herein, who was plaintiff in the said former divorce proceedings, further was vital, necessary and essential to the establishment of the bona fides of the case and essential and vital to the proof of jurisdictional facts necessary for the maintenance of said former divorce action in the State of Florida.

Plaintiff now alleges that said testimony and all of the other favorable testimony given by the defendant herein, as plaintiff in the said former divorce proceedings, and by the witnesses called in his behalf, was false, untrue and perjured and that the defendant, as plaintiff in the said former divorce proceedings, well knew, at the time of giving his said testimony, and adducing the testimony of the witnesses called in his behalf, that the same was false, untrue and perjured, and that said testimony was false, untrue and perjured is established and proven by matters and things transpiring since the entry of the final decree of divorce in said former proceedings, in that the said final decree was entered and filed on the 25th day of July, A. D. 1955, and that four (4) days later, to-wit: On the 29th day of July, A. D. 1955, the defendant herein, Norman N. Holland and the said Judith H. Wartell, the woman who was the subject of the testimony above set forth and who was involved in certain adulterous acts with said defendant herein, as will be hereinafter more fully alleged, made application for a marriage license at Fort Lauderdale, Broward County, Florida, and that subsequently, to-wit: On the 1st day of August, A. D. 1955, the marriage license was issued to the said Norman N. Holland and Judith H. Wartell and the said parties were married on the 4th day of August, A. D. 1955, the same being ten (10) days after the entry of the said decree of divorce in the said former proceedings, all of which matters and things were of course unknown and could not have been known to plaintiff herein by the exercise of reasonable diligence, but which matters and things demonstrate and evidence the fraud perpetrated upon plaintiff herein by the defendant herein and upon the Court in said former divorce proceedings.

Plaintiff further alleges in connection with the said marriage aforesaid between the defendant herein and the said Judith H. Wartell, that it appears from the record, Plaintiff's Exhibit "A" in this cause, that the defendant herein and the said Judith H. Wartell, instituted their actions for divorce at approximately the same time; that the said Judith H. Wartell instituted suit for divorce against plaintiff herein in Dade County, Florida, said divorce proceedings being referred to in this Bill of Complaint in the nature of a Bill of Review as the said former divorce proceedings between the parties herein; that the said Judith H. Wartell secured a decree of divorce from her then husband in or about the month of May, A. D. 1954, which would have been approximately the time when the defendant herein could have anticipated a decree in the said former divorce proceedings—where in the plaintiff herein was defendant and the defendant herein was plaintiff—had not the plaintiff herein interposed an answer and defended the said former divorce proceedings.

8.

Plaintiff alleges that the venal, corrupt relationship existing among the said Judge Holt, Morton Rothenberg, Jack D. Burris, John Prunty and Thurman A. Whiteside, as hereinabove alleged, were not known to and discovered by the plaintiff herein during the pendency of the said former divorce proceedings and became known to plaintiff herein gradually, and only after the investigations into the conduct, affairs and charges of misconduct and unethical practices in office of the said Judge Holt by the Grand Jury of Dade County for the Fall term of A. D. 1955 and succeeding Grand Juries in said County, the Special Investigating Committee of the Florida Bar and the adducement of certain evidence and testimony before the Special Investigating Committee of the House of Representatives of the State of Florida and the Senate of the State of Florida in the impeachment trial of the said Judge Holt, and that none of the matters and things hereinabove set forth and alleged which

are now known to the plaintiff herein were known or could have been known to the plaintiff herein by the exercise of reasonable diligence prior to the entry of the decree of divorce against the plaintiff herein in the said former divorce proceedings.

9.

Plaintiff alleges that the record in the said former divorce proceedings, which has been made a part hereof as plaintiff's Exhibit "A", is replete with evidence of venality, bias and prejudice on the part of the said Judge Holt and on the part of the said John Prunty, as Special Master, against the plaintiff herein, as the defendant, and in favor of the defendant herein as the plaintiff in the said former divorce proceedings, all of which was the direct result of the venal and corrupt relationship, hereinabove fully alleged, among the said Judge Holt, the said John Prunty, as Special Master, and his law partner, the said Thurman A. Whiteside, the defendant herein, who was the plaintiff in the said former divorce proceedings, and the said Stanley Joel Levine, Morton Rothenberg and Jack D. Burris, who were the Attorneys of Record of the plaintiff in the said former divorce proceedings and who is the defendant herein, and that, in consequence of the said venal and corrupt relationship, the said Judge Holt and the said John Prunty, as Special Master, knowingly ignored and failed to apply the substantive and adjective law of the State of Florida, then in effect, fairly and impartially, to the proceedings taken in and to the issues which arose during the course of the said former divorce proceedings and the trial thereof, and the decisions, rulings and orders made and the said report of the Special Master filed and the decree entered therein, all of which is fully evidenced by the said record in the said former divorce proceedings, plaintiff's Exhibit "A", and including, but not limited to the rulings and orders of Judge Holt limiting the plaintiff herein as the defendant in the said former divorce proceedings to counsel

fees of $500.00 and suit money of $200.00, as hereinabove alleged; the making and the entry of the order dated November 5th, 1954, suppressing the notice of the plaintiff herein, as the defendant in the said former divorce proceedings, to take the deposition of the plaintiff therein, who is the defendant herein; and directing the said cause to proceed to trial without said pre-trial deposition; the making and entry of the order dated November 5th, 1954, suppressing the deposition of the said Judith H. Wartell, without requiring the production of the said deposition for review by the said Court, and although, in the deposition the said Judith H. Wartell invoked the protection of the Fifth Amendment to the Constitution of the United States of America approximately 300 times, in response to questions which the said Judith H. Wartell deemed pertinent to the relationship and the course of conduct of the said Judith H. Wartell with the defendant herein; and the approval, affirmance, ratification and condonation by the said Judge Holt of the acceptance by John Prunty of an undisclosed amount of money allegedly for his services as Special Master in said cause and being exemplified by the rulings of the said John Prunty as Special Master, including, but not limited to his limiting of cross-examination by the attorneys for the Plaintiff herein as the defendant in the said former divorce proceedings of the witnesses produced in behalf of Norman N. Holland, the defendant herein, the plaintiff in the said former divorce proceedings, and further in holding and finding that the said Norman N. Holland did not commit adultery with the said Judith H. Wartell when the said Norman N. Holland, in his sworn testimony, made numerous admissions of fact which the Supreme Court of Florida has on numerous and recent occasions held to constitute proof of adultery and further by ignoring the testimony of eleven disinterested witnesses who testified on behalf of the plaintiff herein, as the defendant in the said former divorce proceedings, all of whom, with the exception of three, were close personal friends of both parties, and

all of the forty-six items of documentary evidence, hereinafter described, introduced by the plaintiff herein as the defendant in the said former divorce proceedings, evidencing the warped and depraved mind and actions and the fraud and perjury of the defendant herein.

Plaintiff thereupon alleges that except for the bias and prejudice of the said Judge Holt and the said John Prunty, the decree of divorce granted to the defendant herein in the said former divorce proceedings would never have been entered and that the said decree of divorce was obtained by fraud, and the exercise of undue, venal and corrupt influence arising out of the improper venal and corrupt relationship hereinabove alleged, and that had any fair, unprejudiced and unbiased Court had before it the proceedings in the said former divorce action, together with the facts recently discovered and alleged herein, the said decree of divorce would not have been entered.

Plaintiff thereupon alleges that the said former decree of divorce should be set aside, vacated and declared null and void.

10.

Plaintiff further alleges that prior to the time that the said John Prunty, as Special Master, had completed and filed his report in the said former divorce proceedings, the defendant herein, Norman N. Holland, spoke to the plaintiff herein on the telephone and informed her, among other matters, in substance as follows:

(a) That the case had been fixed in his favor;

(b) That the Special Master, the said John Prunty, had made a report, recommending that he, Norman N. Holland be granted a divorce.

11.

Plaintiff alleges that the final decree of divorce in the said former proceedings was entered on the 25th day of July, A. D. 1955, and that thereafter and on or about or

shortly prior to the 4th day of October, A. D. 1955, certain overtures were made to the attorneys for the plaintiff herein by the attorneys of record for the defendant herein, the purpose of which was represented by the attorneys of record for the defendant herein to be to reach an agreement of settlement whereby the plaintiff herein would agree to discontinue her appeal from the said decree of divorce; that on the date last mentioned, the Honorable Stanley Joel Levine, one of the attorneys of record for Norman N. Holland, the plaintiff in said divorce proceedings, attended a conference which the said Stanley Joel Levine had arranged ostensibly for the aforesaid purpose with the attorneys representing the plaintiff herein, the defendant in the said former divorce proceedings, to-wit: Honorable Louis S. Bonsteel, of the firm of Smathers, Thompson, Maxwell and Dyer, and with Jerome J. Wallner, Esq., of New York counsel, for Sylvia Schindler Holland, the plaintiff herein; that during course of said conference, the said Stanley Joel Levine, in substance, made the following statements:

(a) That he, the said Stanley Joel Levine, subscribed to the belief that, in the practice of the law, it was ethical and proper for an attorney at law to offer to pay or to arrange for his client to offer and to pay a bribe to people in public office if the purpose of the bribe was to secure rights to which the client believed he was entitled.

(b) That, in the then pending case, to-wit, the divorce action of the said Norman N. Holland, the plaintiff therein, against the said Sylvia Schindler Holland, the defendant therein, Sylvia Schindler Holland, did not have a chance to prevail in said action, regardless of the proof that might be adduced in her favor against the contentions of the said Norman N. Holland.

(c) That it was a matter of common knowledge that the said Judge Holt spends more than three times his visible

income and that he, the said Stanley Joel Levine, knew where the said Judge Holt obtained extra funds for his living expenses; that the said Judge Holt, was owned by three men from Miami Beach, and that he, the said Stanley Joel Levine, well knew the three men and how to reach them.

(d) That he, the said Stanley Joel Levine, could also tell a very interesting story about the said John Prunty, and that, at the conclusion of the divorce action, he would relate the said interesting story about the said John Prunty.

(e) That an offer was being made after the entry of the decree in favor of the defendant herein, the said Norman N. Holland, because the said Norman N. Holland was anxious to return immediately to the State of New York to live and where he could earn more than two or three times the amount of money he was earning in Florida, and that, the said Norman N. Holland was anxious to avoid the delay in returning to New York of at least a year that would be occasioned by the said appeal by the plaintiff herein to said Supreme Court.

(f) That the said Stanley Joel Levine further stated that he knew of the telephone call hereinabove alleged from Norman N. Holland, the defendant herein, to Sylvia Schindler Holland, the plaintiff herein, during which the said Norman N. Holland had informed the said Sylvia Schindler Holland of the fact that the case had been fixed and that the Master had ruled in his favor.

Plaintiff further alleges that, after the said conference, her attorneys of record in the said former divorce proceedings, believed it to be their duty and responsibility to report to the said Judge Holt the matters and things stated by the said Stanley Joel Levine, as hereinabove alleged and, a few days subsequent to the said conference with the said Stanley Joel Levine, the Honorable Louis S. Bonsteel and the Honorable Richards V. Maxwell, of the firm of

Smathers, Thompson, Maxwell and Dyer, Esqs. went to the Chambers of the said Judge Holt and there fully informed the said Judge Holt of the statements and remarks made by the said Stanley Joel Levine at the said conference with the said Louis S. Bonsteel and the said Jerome J. Wallner, and, at the conclusion of the said conference with the said Judge Holt, the said Judge Holt expressed appreciation to the said attorneys for disclosing said matters and remarks to him.

Plaintiff further alleges that the said Judge Holt took no action whatever with respect to the aforesaid matters and remarks disclosed to the said Judge Holt during the aforesaid conference by the said Louis S. Bonsteel and Richards V. Maxwell.

12.

Plaintiff herein alleges that the rulings and the said report of the said Special Master, John Prunty, were and are the result of venality, corruption, bias and prejudice resulting from the matters and things herein alleged, and all of which fully appear from the record in the said former divorce proceedings, which is made part hereof as Plaintiff's Exhibit "A".

13.

The venality, corruption, bias and prejudice of the said John Prunty, as Special Master, appears in innumerable rulings and remarks, during the progress of the cause before him and in his report, including but not limited to the following:

While recognizing the existence of documentary evidence which conclusively impeached the plaintiff in the said former divorce proceedings and which conclusively demonstrated the truth of the defendant in the said former divorce proceedings, the Special Master did not consider such evidence, evaluate the same, or give any heed thereto in his Report, completely ignoring the manifest

weight of some 46 items of documentary evidence—consisting of agreements, two reels of motion pictures in color, photographs, contracts, letters, skits, scripts, magazine articles, the United States Department of Commerce local weather report for New York City during the month of December, 1953, and other papers, all of which were vitally material and relevant, the genuineness and correctness of which was undenied and uncontradicted, and also the crucial admissions made by the plaintiff therein during the course of his testimony, as hereinafter more fully alleged, and the uncontroverted testimony in favor of the defendant therein, adduced through eleven disinterested witnesses called in behalf of the defendant therein, and all but three of whom had been close personal friends of both parties for many years prior thereto.

14.

That although the record demonstrates, without denial or contradiction, that the following facts existed in regard to the relations between the defendant herein, the said Norman N. Holland, and the said Judith H. Wartell, to wit:

That the said Judith H. Wartell and her then husband, Burton Wartell, were married and the parents of two children, and the plaintiff and the defendant herein, Sylvia Schindler Holland and Norman N. Holland, were married and the parents of two children, both families enjoying a happy family existence; that the said families resided in the State of New York; that, in 1952, the plaintiff and the defendant herein decided to sell the home which they then owned and the said Wartells desired to and did purchase the said home, thus bringing about the first acquaintanceship between the said families; which acquaintanceship, however, rapidly developed into friendship between the families during the course of which the said Wartells visited at the new home of the parties to this suit daily, with

rare exception, but it developed that the said Burton Wartell was required by his employment to go to work in the early hours of the morning and he frequently retired from social festivities earlier than his wife, the said Judith H. Wartell desired to retire, and it became customary for the said Burton Wartell to leave the home of the parties herein earlier than his said wife, Judith H. Wartell; that thereafter and later in the evening, the defendant herein, Norman N. Holland, would take the said Judith H. Wartell to her home; that the said Judith H. Wartell began to take part in the skits and shows directed by the defendant herein and it became obvious and a matter of public notice that the defendant herein, and the said Judith H. Wartell, were involved in certain indiscretions and were becoming more intimate than was proper; that the defendant herein and the said Judith H. Wartell frequently engaged in kissing and embracing in the presence of guests in the homes of friends and in public places, and each devoted his or her attentions almost exclusively to the other and that an adulterous course of conduct between the defendant herein and the said Judith H. Wartell soon became apparent, and caused the many close friends of the parties herein, of many years standing, a number of whom testified at the trial in the said former divorce proceedings, to cease attending social affairs and exchanging visits with the parties herein, and gradually the parties herein found that they were abandoned by their old friends, and that in lieu of the said friends, the plaintiff herein was being compelled by the defendant herein to associate and to consort with friends of the said Judith and Burton Wartell, the average age of whom was at least ten years younger than the age of the parties herein and their former friends of long standing; that the said new friends drank to excess, and otherwise caused the plaintiff herein to suffer extreme humiliation and embarrassment; that the attitude of the defendant herein towards the plaintiff herein changed com-

pletely from that of a loving, respecting husband towards a loving and respecting wife; that the defendant herein continued his said intimacies and adulterous course of conduct with the said Judith H. Wartell, and he became cross, irritable, extremely cruel and highly abusive towards the plaintiff herein and the two children born of the parties, thereby causing to the plaintiff herein further unbearable humiliation, embarrassment, emotional distress and physical illness, all of which is uncontrovertibly proven in the testimony adduced on the trial in the said former divorce proceedings and made a part hereof by reference as plaintiff's Exhibit "A", all of which matters and things —together with the execution of the fraudulent plan and scheme of the defendant herein, and the said Judith H. Wartell, whereby the defendant herein agreed to abandon and to obtain a divorce from the plaintiff herein, and the said Judith H. Wartell agreed to obtain a divorce from her then husband, the said Burton Wartell, and that the defendant herein and the said Judith H. Wartell would then marry each other—led eventually to the cessation of marital relations, and the abscondance by defendant herein from the home of the parties herein, the abandonment by the defendant herein of the plaintiff herein and their two children, and the failure of the defendant herein to adequately provide for the maintenance and support of the plaintiff herein and their two children.

The facts hereinabove alleged are proven by an overwhelming mass of sworn testimony and, with this situation prevailing, the admissions of the defendant herein of his intimacies with the said Judith H. Wartell conclusively demonstrate and prove the adulterous relationship between the defendant herein and the said Judith H. Wartell, the fraudulent plan and scheme of the defendant and the said Judith H. Wartell, hereinabove alleged, and the perjury on the part of the defendant herein and the witnesses called in behalf of the defendant herein as the plain-

tiff on the trial in the said former divorce proceedings, the said admissions being in substance, as follows: that on five separate occasions, at night, the defendant herein and the said Judith H. Wartell, separately, alone, and in separate automobiles, drove to an appointed place in or near the Long Island Railroad Station, in the town of Valley Stream, in the State of New York, which place was many miles distant from the respective homes of the defendant herein and the said Judith H. Wartell, and the defendant herein and the said Judith H. Wartell would then leave one of the said automobiles and drive away together in the other of the said automobiles to divers places, including the notorious and dark Lovers' Lane in Forest Park, in New York City, in the State of New York, and stay together for many hours; that on the night of December 13th, 1953, the defendant herein met the said Judith H. Wartell at the said Long Island Railroad Station, parked his automobile, entered the automobile of the said Judith H. Wartell, alone in the company of each other, after a few minor delays and stops, drove to and entered Forest Park, at which time and place the following matters and things transpired, all of which were specifically admitted by the defendant herein:

(a) The defendant herein and the said Judith H. Wartell drove their car to a dark parking place in the said park;

(b) The lights of the said automobile were extinguished and it was dark inside of the said automobile;

(c) The defendant herein and the said Judith H. Wartell got into the back seat of their said automobile, the windows of which were closed;

(d) The defendant herein removed his overcoat and jacket and put them along the rear deck of the seat of said automobile, he was dressed in a shirt and trousers;

(e) The said Judith H. Wartell removed her coat and it was hung on a little hook near a side window of the said automobile. She was dressed in a skirt and blouse.

(f) According to the United States Department of Commerce Weather Bureau's local weather report (Defendant's Exhibit "A-7" in the former divorce proceedings), the temperature prevailing at that time in New York City, in the State of New York, was 46°F.

(g) The defendant herein and the said Judith H. Wartell remained in the rear of the said automobile for approximately one hour;

(h) The fly of the trousers of defendant herein was unzipped and his trousers were open.

(i) The defendant herein and the said Judith H. Wartell were embracing and kissing each other, and their bodies were in contact with one another.

all of which admissions constitute sufficient evidence to prove adultery under the decisions and laws of the State of Florida, and the perjury on the part of the defendant herein, and the witnesses called in his behalf on the trial in the said former divorce proceedings.

The venality, corruptness, bias and prejudice of the Master is overwhelmingly evidenced in that he found and reported that, the above admitted facts notwithstanding, he did not believe that adultery had been committed between the defendant herein and the said Judith H. Wartell.

15.

The bias and prejudice of the said Special Master, John Prunty, is especially evident in the summary of the testimony that he accepted and believed to-wit:

(a) He accepted the testimony of relatives and friends of the said Norman N. Holland, the plaintiff therein and defendant herein, as true in each and every particular,

although uncorroborated and patently replete with perjury and unworthy of belief.

(b) He ignored, made no comment on or made no reference to testimony of disinterested persons and mutual friends of the parties herein who testified in behalf of the plaintiff herein who was the defendant in the said former divorce proceedings, although the said testimony was highly credible and most pertinent and relevant to and should have been decisive of all of the material issues in the said cause.

(c) He gave full weight in every particular to the testimony of the defendant herein who was the plaintiff in the said former divorce proceedings, although the said testimony was uncorroborated and replete with perjury and unworthy of belief, and he ignored and disregarded the admissions of the defendant herein on many crucial issues, including, but not limited to his adulterous course of conduct, adultery and intimacies with the said Judith H. Wartell.

16.

Plaintiff herein thereupon alleges that the findings of the Special Master, John Prunty, in the said former divorce proceedings and the adoption thereof by the said Judge George Holt, and the entry of the said final decree of divorce in the said former divorce proceedings was the result of venality, corruption, bias and prejudice on the part of the said John Prunty, as Special Master, and the said Judge Holt, in favor of Norman N. Holland, the defendant herein and against Sylvia Schindler Holland, the plaintiff herein.

17.

Plaintiff alleges that the conduct alleged herein as to Judge George E. Holt and Special Master John Prunty is violative of Rules and Canons adopted by this Court governing the conduct of attorneys in the State of Florida; and more particularly violative of the following:

"Marked attention and unusual hospitality on the part of a lawyer to a Judge, uncalled for by the personal relations of the parties, subject both the Judge and the lawyer to misconstructions of motive and should be avoided * * *." (Canon 3 of Canons of Professional Ethics)

"A judge should abstain from making personal investments in enterprises which are apt to be involved in litigation in the court; and after his accession to the Bench, he should not retain such investments previously made, longer than a period sufficient to enable him to dispose of them without serious loss. It is desirable that he should, so far as reasonably possible, refrain from all relations which would normally tend to arouse the suspicion that such relations warp or bias his judgment, or prevent his impartial attitude of mind in the administration of his judicial duties. * * *" (Canon 26 of Canons of Judicial Ethics.)

"A judge should not accept any presents or favors from litigants or from lawyers practicing before him or from others whose interests are likely to be submitted to him for judgment." (Canon 32 of Canons of Judicial Ethics.)

"It is not necessary to the proper performance of judicial duty that a judge should live in retirement or seclusion; it is desirable that, so far as reasonable attention to the completion of his work will permit, he continue to mingle in social intercourse, and that he should not discontinue his interest in, or appearance at meetings of members of the Bar. He should, however, in pending or prospective litigation before him be particularly careful to avoid such action as may reasonably tend to awaken the suspicion that his social or business relations or friendships constitute an element in influencing his judicial conduct." (Canon 33 of Canons of Judicial Ethics.)

18.

Plaintiff further alleges that the matters and things alleged herein as the basis of relief to plaintiff were unknown to plaintiff at the time of the entry of Final Decree in the cause wherein Norman N. Holland was plaintiff and Sylvia Schindler Holland was defendant, being Chancery Case No. 169465-A lately pending in the Circuit Court of Dade County, Florida, said Final Decree being entered therein on the 25th day of July, A. D. 1955, nor could have such matters and things been known to plaintiff herein by the exercise of reasonable diligence, but such things were revealed gradually and became known to plaintiff only through means of certain investigations and reports made by Grand Juries of Dade County, Florida, and the investigation made by the House of Representatives and the records of the impeachment trial of Judge George E. Holt which complete reports and records have only recently been available to plaintiff herein, and plaintiff alleges that she has proceeded with all diligence after such complete records and reports revealed the matters and things alleged herein.

WHEREFORE, plaintiff prays:

(1) That the Final Decree entered in the cause, Norman N. Holland, plaintiff, vs. Sylvia Schindler Holland, defendant, being Chancery Cause No. 169465-A, lately pending in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, on the 25th day of July, A. D. 1955, be reviewed and reversed, vacated, set aside and declared to be null and void and of no effect in law or equity, and no further proceedings be taken thereon, and that plaintiff have such other and further relief as shall be meet and proper.

s/ SYLVIA SCHINDLER HOLLAND,
Plaintiff.

(Sworn to January 29, 1958.)

ORDER OF COURT OF APPEALS FOR DISTRICT OF COLUMBIA CIRCUIT, DATED APRIL 17, 1958 IN WKAT ET AL. V. F. C. C.

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

April Term, 1958

Nos. 13,718, 14,021, and 14,170

WKAT, INC.,

Appellant,

—v.—

FEDERAL COMMUNICATIONS COMMISSION,

Appellee,

PUBLIC SERVICE TELEVISION, INC.,

Intervenor.

No. 13,725

EASTERN AIR LINES, INC.,

Appellant,

—v.—

FEDERAL COMMUNICATIONS COMMISSION,

Appellee,

PUBLIC SERVICE TELEVISION, INC.,

Intervenor.

Before:

PRETTYMAN, WASHINGTON, and DANAHER,
Circuit Judges.

These cases came on for consideration of appellee's motion to remand the cases to the Federal Communications Commission and said motion was argued by counsel.

It appearing that the Commission alleges in its motion that since the filing of these appeals, public charges have been made in the course of a Congressional investigation that one of the Commissioners who participated in the proceedings before the Commission, but who has since resigned, should have disqualified himself; and the Commission having lodged with the Clerk of this Court a transcript of the said investigation; and it having been agreed in oral argument that charges of the described nature was made in the said Congressional investigation; and it further appearing that the Commission has deemed the evidence brought to its attention to be sufficiently serious to warrant a motion to remand;

Therefore, for the purposes hereinafter indicated it is hereby ordered that these cases be remanded to the Commission with instructions to proceed forthwith to hold an evidentiary hearing concerning the possibility that the award heretofore made may be void *ab initio* or voidable and that a party, or various parties, may be disqualified by reason of misconduct to receive an award of a television construction permit, and in connection with that hearing the Commission shall make, at least in part but not be limited to, findings of fact in the following particulars

what circumstances formed the basis for the public charges that one of the members of the Commission should have disqualified himself in these proceedings; and

whether any person or persons influenced or attempted to influence any member of the Commission in respect to the present proceedings in any manner whatsoever except by the recognized and public processes of adjudication (see Root Refining Co. v. Universal Oil Products Co., 169 F. 2d 514, 534-5, 540-1 (3d Cir. 1948)), and, if so, the full facts and circumstances; and

whether any party to the proceeding before the Commission directly or indirectly secured, aided, confirmed, ratified, or knew of any misconduct found by the Commission to have occurred;

And it is further ordered that all parties to these cases before the Commission shall be admitted to participate as parties in the evidentiary hearing, if they so request, and that any person or persons concerning whom evidence may be received in the said hearing shall be permitted to cross-examine and to submit rebuttal testimony if he or they request the opportunity to do so.

And the Commission is further instructed to report its findings to this court and recommend to this Court such disposition of these appeals as seems to it necessary or desirable in view of its findings of fact;

And the Commission is further instructed to notify the Attorney General of the United States of the pendency of its evidentiary hearing and the purpose thereof; and to permit him, or his designated representative, if he so moves, to participate in the hearing as amicus curiae;

And it is further ordered that this Court retain jurisdiction of these appeals pending receipt of the findings and report of the Commission pursuant to this order;

And it is further ordered that the Commission report to this Court its progress upon the foregoing duties within six weeks from this date, including such recommendations as seem to the Commission to be desirable at that stage of the proceeding.

Per Curiam.

Dated: April 17, 1958.

FILE COPY

FILED
OCT 17 1958
JAMES R. BROWNING, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958.

No. 370.

SYLVIA SCHINDLER HOLLAND,
Petitioner,

vs.

NORMAN N. HOLLAND,
Respondent.

BRIEF OF RESPONDENT, NORMAN N. HOLLAND, IN OPPOSITION TO GRANTING OF PETITION FOR WRIT OF CERTIORARI TO SUPREME COURT OF FLORIDA, AND APPENDIX.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958.

No. 370.

SYLVIA SCHINDLER HOLLAND,
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Respondent.

BRIEF OF RESPONDENT, NORMAN N. HOLLAND, IN OPPOSITION TO GRANTING OF PETITION FOR WRIT OF CERTIORARI TO SUPREME COURT OF FLORIDA, AND APPENDIX.

The petition for writ of certiorari sets forth a contention that there is a Federal question involved which this Court has the jurisdiction and power to review, by claiming that the Courts of Florida have deprived the petitioner of the benefit of Amendment XIV to the Constitution of the United States.

The bare facts of the case, as reflected by the record, may be summarized briefly as follows:

On the 24th day of May, 1954, Norman N. Holland filed a suit for divorce in the Circuit Court of Dade County, Florida, setting forth that he was a resident of the State of Florida, and that he had grounds for divorce under the laws of the State of Florida.

The defendant, Sylvia Schindler Holland, entered an appearance in the Circuit Court of Dade County, Florida, attempting to dismiss the case, raising the question of residence. The motion with reference to the sufficiency of the complaint as to residence was overruled by the Circuit Judge, but with leave to the wife, Sylvia Schindler Holland, to plead those matters in her answer to the complaint. In that answer she recited her claim that the Florida Court had no jurisdiction over her or over the subject matter, and then she denied each and every of the factual matters alleged by the plaintiff as grounds for divorce.

Among other defenses, she alleged factually that plaintiff in the court below had committed adultery. These facts appear in the appendix to the petition filed by petitioner.

After a long and arduous trial before a Special Master, the Master recommended that divorce be granted in favor of the plaintiff. Exceptions were filed to the Master's report, and the court below, to wit, the Circuit Judge, overruled those exceptions and entered a decree of divorce in favor of Norman N. Holland against Sylvia Schindler Holland.

Several collateral motions were then filed subsequent to the entry of the decree by Sylvia Schindler Holland, attacking the findings of fact and conclusions of law of the Master and the decree of the Court; and asking for a rehearing. The first Circuit Judge who entered the decree was the Honorable George E. Holt. On subsequent mo-

tions, one of the other Circuit Judges, the Honorable Marshall C. Wiseheart, heard the motions, and he also denied the petition for rehearing and other relief.

Sylvia Schindler Holland then appealed the decisions of the lower court to the Supreme Court of Florida, where the entire record, including all of the transcript of the testimony, was reviewed by the Supreme Court of Florida. The index to the transcript will disclose that from May 24, 1954 to January 28, 1955, there were continuous hearings. The transcript of the testimony was filed on May 5, 1955, as a part of the Master's report. The index to that testimony, which is set forth in the index to the transcript, will show that there were some 20 or 25 witnesses produced by the respective parties, and the entire record, including the Master's report, the testimony, the pleadings and the other proceedings created a record of approximately 2500 pages.

Final decree was entered on July 25, 1955, all as will be reflected by the index to the transcript and by the transcript in this cause filed in this Court.

On May 1, 1957, the Supreme Court of Florida entered its opinion affirming the lower court. Petition for rehearing was then filed on May 16, 1957, and on June 5, 1957, the Supreme Court of Florida entered its order denying the petition for rehearing.

No appeal was taken to this Court, nor was there any petition for certiorari filed, and the case was concluded, so far as the State of Florida was concerned and the Courts of Florida were concerned, on June 5, 1957, when the rehearing was denied.

On February 25, 1958, Sylvia Schindler Holland, through her counsel, filed a petition in the Supreme Court of the State of Florida, asking leave to file a bill of review, and attaching thereto a proposed bill of review.

The record sent to this Court failed to include or to disclose the fact that Norman N. Holland filed a motion to dismiss and or response to the petition for leave to file bill in nature of bill of review, and a true copy of this response is attached as a part of the appendix to this brief.

On April 1, 1958, the Supreme Court of Florida entered an order denying the petition for leave to file a bill of review.

Then counsel for Sylvia Schindler Holland filed a petition for rehearing from that order, and this was denied.

The point in controversy is whether the granting or denial of a divorce by the Courts of Florida presents any Federal question or Federal Constitutional question.

Under the full faith and credit clause of the United States Constitution, the action by the Supreme Court of Florida in affirming the decree of the lower court after a complete review of all the evidence, is final on the question of marital status, particularly so where it is admitted that both of the parties submitted themselves to the jurisdiction of the Florida Court and the case was tried upon the merits.

The petition for leave to file a bill of review, filed in the Supreme Court of Florida, as well as the petition for writ of certiorari in this case, claim that there was some concealed motive which influenced the judgment or action of the Special Master who heard the witnesses, or some concealed motive or hidden influence which influenced one of the Circuit Judges who entered the decree in the first instance. No claim is made that the Honorable Marshall C. Wiseheart, the second Judge, who denied the petition for hearing and other relief in the lower court, nor any member of the Supreme Court of Florida, was preju-

diced or that they failed to give due consideration to the record, or that they disposed of the appeal without a hearing, or that there was any corruption or fraud practiced by the Supreme Court of Florida.

After the Supreme Court of Florida on two occasions, namely, at the time of the hearing on the first appeal and then on petition for rehearing, reviewed the record and the testimony and entered its order affirming the lower court, that became the order of the Supreme Court of Florida, and it made no difference what Judge had entered the original decree in the lower court.

The Marital Contract Is Not Within the Purview of the Federal Constitution.

In a nebulous way, the petitioner suggests that she "has been deprived of her marital contract" by the due process of law accorded her by the Fifth and Fourteenth Amendments of the Constitution.

As the Fifth Amendment on its face restrains national action only—unless by the impact of the Fourteenth—it operates on state action also. Some difficulty is encountered in determining how the action of the Florida Courts offends it. Howbeit, the language of Chief Justice Marshall in the Dartmouth College case (4 Wheat. 518) would seem to settle it:

> "* * * The provision of the constitution never has been understood to embrace other contracts than those which respect property, or some object of value, and confer rights which may be asserted in a court of justice. It never has been understood to restrict the general right of the legislature to legislate on the subject of divorces. Those acts enable some tribunal, not to impair a marriage contract, but to liberate one of the parties because it has been broken by the other. When any state legislature shall pass an act annulling all

marriage contracts, or allowing either party to annul it without the consent of the other, it will be time enough to inquire whether such an act be constitutional."

See also *Maynard* v. *Hill*, (1888) 125 U.S. 190.
Hunt v. *Hunt*, (1879) 131 U.S. Append. clxv.

It has generally been considered by the courts of this country, Federal and State, that marriage, though in some respects a contract, is not within the constitutional interdiction of legislative acts impairing the obligation of contracts.

Cabell v. *Cabell's Adm'r*, (1858) 58 Ky. (1 Metc.) 319.

Livingston v. *Livingston*, (1903) 173 N.Y. 377, 66 N.E. 123, 93 Am. St. Rep. 600, 61 L.R.A. 800.

White v. *White*, (1849) 5 Barb. (N.Y.) 474, 4 Howard's Pract. 102.

Rugh v. *Ottenheimer*, (1877) 6 Ore. 231, 25 Am. Rep. 513, 38 Pac. St. Rep. 231.

State v. *Tutty*, (1890) 41 Fed. 753, 7 L.R.A. 50.

If Sylvia Schindler Holland had attempted to approach this Court by petition for certiorari within the statutory limit after the final opinion and judgment of the Supreme Court of Florida had been entered on June 5, 1957, then the petitioner would have been confronted with the question that the Supreme Court of Florida had failed to protect her constitutional rights or right in a contract, to wit: the marriage contract. And if she at that time had filed such a petition, she would have been met with the proposition, as above set forth, that the marital contract is not one which is guaranteed by the United States Constitution, and that the relationship under the marriage contract is not a Federal question nor protected by the Federal Constitution.

That was the ruling made by this Court, in effect, in the case of *Annie Hahr Pawley, Appellant*, v. *William D. Pawley, Respondent*, October Term, 1950, certiorari denied 46 So. 2d 464, petition for rehearing denied 47 So. 2d 546, certiorari to Supreme Court of United States denied 71 S. Ct. 90, 340 U.S. 866, 95 L. Ed.

However, the position of the said Sylvia Schindler Holland now does not even have that standing in this Court because it is the universal law of the land, including both the State and Federal decisions, that when a court of final resort has entered a final judgment or order or decree, and thereupon the decree or order is final, either by failure to appeal or by appeal and final action of the Appellate Court, that order cannot be set aside or ignored. If anyone has newly discovered evidence, then application must be made to the final court which had passed the final judgment by way of petition for leave to file a bill of review, or for leave to file a bill in the nature of a bill of review. These petitions are not granted as a matter of right but appeal only to the discretion of the final Appellate Court or the court of last resort.

In the case of *Seven Up Co.* v. *Cheer Up Sales Co.*, 153 F. 2d 231 (C.C.A. 8), that Court said, in announcing the general rule (see headnote 1):

> "The allowance by an appellate court of a petition for permission to file a bill of review in trial court rests in the sound judicial discretion of appellate court, and should be exercised cautiously and sparingly and only in cases where it is clearly demonstrated that the interests of justice will undoubtedly be served thereby."

In this case the Court referred to other cases as authority for its decision, to wit, *Obear-Nester Glass Co.* v. *Hartford Empire Co.*, 61 F. 2d 31; *Hagerott* v. *Adams*, 8 Cir.,

61 F. 2d 35, certiorari denied 288 U. S. 599, 53 S. Ct. 317, 77 L. Ed. 975, and *Hagerott* v. *Adams*, 8 Cir., 70 F. 2d 352.

In the last mentioned case, citing from 70 F. 2d 356, it appeared that the lower court which had been granted authority to consider the question of whether to grant leave to file a bill of review, had considered the claims of the petition and the affidavits, and had ordered that the motion for leave to file a bill of review be denied. An appeal was then taken from the District Court to the Circuit Court of Appeals for the 8th Circuit for the purpose of asking that Court to reverse its order, claiming that it was unsupported by the evidence or contrary to law, and there was an abuse of discretion. The Court said:

> "Proceedings to open up a judgment by bill of review on the ground of newly discovered evidence are analogous to motions for new trial on the same grounds. Such a proceeding is not founded in a matter of right, but rests in the sound discretion of the trial court. 'Matters resting in the discretion of a subordinate court cannot be assigned for error in an appellate court.' Steines v. Franklin County, 14 Wall. (81 U.S.) 15, 22, 20 L. Ed. 846. See, also, Thomas v. Brockenbrough (Harvie's Heirs), 10 Wheat. 146, 6 L. Ed. 287; Ricker v. Powell, 100 U.S. 104, 25 L. Ed. 527; Hopkins v. Hebard, 235 U.S. 287, 35 S. Ct. 26, 59 L. Ed. 232; National Brake Co. v. Christensen, 254 U.S. 425, 41 S. Ct. 154, 65 L. Ed. 341; Swft v. Parmenter, 22 F. 2d 142 (C.C.A. 8); Travelers' Ins. Co. v. Person, 58 F. 2d 210 (C.C.A. 8); Obear-Nester Glass Co. v. Hartford-Empire Co., 61 F. 2d 31 (C.C.A. 8). Where, as in this case, a long and costly litigation has been carried through to a final conclusion in the Circuit Court of Appeals, nothing could justify upsetting the solemn judgment of the court years afterwards and reopening the litigation short of the most positive, decisive, and convincing proof that injustice had been done, and that, in spite of due diligence of the losing party, the

court had been deceived in regard to the facts, and that new facts afterwards brought to light disclosed the injustice of the judgment. Not only did Judge Molyneaux find no such situation presented by the newly discovered testimony, but he found there was little therein to help the case of the losing party, and nothing to satisfy him that the newly discovered evidence would affect the result already reached in the litigation."

CONCLUSION.

We have carefully analyzed the supporting brief filed by the petitioner, and we cannot find any citation in her brief which supports the doctrine that the Supreme Court of the United States will review a discretionary order of the Supreme Court of a State of the Union where that court of last resort of the State has refused to exercise its discretion and to permit the filing of a bill in the nature of a bill of review. We have not been able to find any decision issued by this Court where this Court has ever entertained a petition for certiorari to review such a discretionary procedure.

As we pointed out in the preliminary part of this brief, the statutory period for any appeal or petition for writ of certiorari from the order of the Supreme Court of June, 1957, had long passed before this petition was filed in the Supreme Court of Florida in February, 1958.

We therefore respectfully submit that this petition for certiorari to this Court should be denied upon the following grounds:

1. That there is no Federal question involved.

2. That there is no Federal Constitutional question involved.

3. That statutory time in which an appeal could be taken from a decree or final judgment of a State Supreme Court has long since elapsed.

4. That the discretionary order of the Supreme Court of Florida in refusing to grant leave to file a bill in the nature of a bill of review, is not an appealable order to this or any other Court.

Respectfully submitted,

WILLIAM GRESHAM WARD,
1240 duPont Building,
Miami, Florida,
Counsel for Respondent.

October ..... , 1958.

IN THE SUPREME COURT OF FLORIDA.

SYLVIA SCHINDLER HOLLAND,
Petitioner,

v.

NORMAN N. HOLLAND,
Respondent.

MOTION TO DISMISS AND/OR RESPONSE TO PETITION FOR LEAVE TO FILE BILL IN NATURE OF BILL OF REVIEW.

Comes now NORMAN N. HOLLAND, the plaintiff below, the appellee herein and respondent to the petition, and for a motion to dismiss and response to the petition for leave to file a bill in the nature of a bill of review, says:

The allegations of the petition in relationship to the allegations of the attached proposed complaint do not show any ground or justification which would require or justify this Court in granting permission to file a bill in the nature of a bill of review in the Circuit Court of Dade County, Florida, in that—

(a) There has been no compliance with the requirements laid down by this Court in numerous decisions, for example—*Hall* v. *Hall*, 112 So. 622, 93 Fla. 809, Supreme Court of Florida, 1927. *Gamble* v. *Gamble Holding Corporation*, 162 So. 886; *City of Lakeland* v. *Chase National Co.*, 159 Fla. 783, 32 So. 2d 833; *DeMarigny* v. *DeMarigny*, 43 So. 2d 442; *Reed* v. *Reed*, 70 So. 2d 836.

Note: These cases will be discussed in the accompanying brief.

(b) The motion and attached complaint taken as a whole must be reviewed in the light of the entire record before the Court.

The following facts gleaned from the record we deem to be admitted:

1. The assignment of this case when it was originally filed in the Circuit Court of Dade County, Florida, was under the rotation doctrine to one of ten Judges. These assignments are made secretly by the Clerk's Office. The cause automatically by this assignment fell into the office of George E. Holt, Circuit Judge, and he at no time exercised any prerogative as the then Presiding Senior Judge to cause the case to be transferred to his Division. (See attached Certificate of Clerk of Circuit Court of Dade County, Florida, supporting this statement.)

2. When this case came at issue, the cause was first set for trial before the Court and then, upon joint consent of counsel, the Court was requested to appoint a Master. Counsel for the defendant, Sylvia Schindler Holland, consented subject to stipulations about payment by plaintiff of all Master's fees regardless of the outcome of the case. (See R. 1235; 2352-4; Appellee's Appendix now on file with this Court, 380, 381-2.)

3. The attorneys for plaintiff against whom collusion is now charged, who practiced law and had their offices at Miami Beach, requested the Court to appoint any competent attorney of the Court's choice who had his offices in Miami Beach for the convenience of the plaintiff and his witnesses most of whom resided at Miami Beach. Counsel for the then defendant, Sylvia Schindler Holland, Louis Bonsteel, whose offices were in the duPont Building, Miami, Florida, requested that for the convenience of the defendant and defendant's counsel, some lawyer

be named who had an office on the Miami side of Biscayne Bay. Defendant's counsel prevailed (see admissions in Reply Brief of Bonsteel, p. 2). Also attached affidavit of counsel.

To suit the convenience of defense counsel, attorney Honorable John W. Prunty, whose offices were in the duPont Building, Miami, Florida, was appointed, all of which was against the announced request of plaintiff's counsel and refutes any inference of any collusive attempt to have this cause referred to the Honorable George E. Holt, Circuit Judge, in the first place, or thereafter to have the said Judge refer this cause to the Honorable John W. Prunty as Master.

After the filing of the Master's report in this case (Appellant's Apdx. 30-60), numerous exceptions were filed by the defendant below, in which all issues concerning bias of the Master, the propriety of his conclusions of law or findings of fact, and the weight of the evidence were all raised (See Appellant's A. 61).

The final decree of divorce was entered on the 25th day of July, 1955 (Appellant's A. 85).

On September 13, 1955, defendant filed a motion to vacate the final decree (Appellant's A. 90), in which it was claimed that certain perjury had been committed by plaintiff, in that it was claimed that Mr. Holland had during the hearings before the Master made certain statements with reference to his proposed or claimed love affair with another woman sometime in January, 1955, and prior to the filing of the Master's report, which was filed on May 13, 1955, and notwithstanding that prior evidence, the plaintiff actually married a Mrs. Wartell on August 4, 1955, or approximately ten days after the final decree of divorce was entered (Appellant's A. 91). It was claimed (Appellant's Appendix 91):

"The defendant further shows that the testimony hereinabove referred to is false and was given for the purpose of perpetrating a fraud upon this Court and the defendant herein."

See, also, supporting affidavit of Louis S. Bonsteel, attorney for defendant, Appellant's A. 92-93.

This issue was then referred to the Honorable Marshall C. Wiseheart, who reviewed the final decree and the proceedings and the petition to vacate and set aside the final decree. That Judge, not Judge George E. Holt entered the order on the 16th day of September, 1955, denying said motion.

Note: The petition for leave to file bill in the nature of bill of review and the attached proposed complaint make no claim whatsoever that Judge Marshall C. Wisehart was biased or prejudiced in any manner.

The appeal was filed on September 25, 1955. An additional or new motion to reconsider Judge Wiseheart's order was filed by Defendant's counsel on October 13, 1955 (Appellant's A. 94) in which counsel, L. S. Bonsteel, among other things contended that Judge Marshall C. Wiseheart had acted in the absence of Judge Holt, and that he was not sufficiently familiar with the lengthy record, in which he contended that Judge Wiseheart was totally unfamiliar with the cause, the pleadings and the voluminous testimony, and the exhibits in evidence, and had wrongfully denied said Motion. He then requested Judge Holt to reverse Judge Wiseheart.

Another motion to vacate the final decree was filed on October 18, 1955, in which the question of the credibility of the plaintiff and the jurisdiction of the Florida Court was again raised, this being about three weeks after the notice of appeal had been filed, and these matters were then

heard before the Honorable George E. Holt on the 20th day of October, 1955, and said Court refused to disturb or vacate the order which had been entered by Marshall C. Wiseheart, and said Court denied both Motions above referred to.

Notice of Appeal is then shown, filed September 25, 1955. Assignments of Error were filed October 3, 1955, eleven in number (Appellant's A. 118-119).

Assignment of Error No. 7 (Appellant's A. 120) raised the question as to the payment of the Master's fee by the plaintiff for an undisclosed amount, and claimed that was contrary to Rule 10 (d) of the Rules of Practice of the Circuit Court for Dade County, Florida.

Assignment of Error No. 10 raised the question of the Court below refusing to amend or set aside the final decree. The same point had already been raised by exceptions to the Master's Report (Appellant's A. 82, Exception 49). The alleged bias of the Master was also raised by Exception 44, sub-paragraph 2 (Appellant's A. 79).

It appears from the record in this case that the two volumes of appellant's appendix to her brief consist of 367 pages. The first brief of appellant was 49 pages. The appendix to Appellee's brief, consisting of two volumes, consisted of a total of 414 pages.

Analysis of Contentions Made by Appellant in Her Original Brief in This Court.

Statement of Points Involved is set forth on page 4 of appellant's brief. Point I is as follows:

> "The plaintiff's adulterous relationship with Mrs. Wartell, whom he married immediately after the entry of his divorce decree, constitutes an absolute defense to this suit."

This point was argued beginning page 5, and the issue was thoroughly briefed and submitted to this Court. The entire record of over 2200 pages, together with some 88 exhibits, were forwarded in their original form to this Court.

Point 2 raised the question that the evidence was not sufficient to sustain the Master and the Lower Court in finding that the defendant was guilty of extreme cruelty and a violent and ungovernable temper, and this matter was thoroughly reviewed by this Court.

Point 3 raised the question of the weight of the evidence to establish plaintiff's domicile in Florida (Appellant's Br., 33).

Point 4 (Appellant's Br., 41) raised the question as to the action of the Court relative to certain discovery depositions, the imposition of certain of the fees against the defendant "and the ratification of the Master's acceptance of a fee in an undisclosed amount from the plaintiff, and the ratification of numerous palpable errors committed by the Master, clearly demonstrate bias of such a degree as to amount to a denial of a fair and impartial hearing".

Counsel for appellant (Br., 47) again argued that the Master's acceptance of a fee in an undisclosed amount violated Rule 10 (d) of the Rules of Practice of the Circuit Court of Dade County, Florida.

These issues were all taken up separately and answered in great detail by appellee's counsel.

A reply brief was then filed by appellant's counsel in which counsel again contended that there was bias. On page 2 counsel contended:

"It was *not* stipulated that John W. Prunty be the Master; on the contrary, when defense counsel in-

quired on this point, Judge Holt merely replied 'It would be someone on this side of the Bay' ".

As shown by affidavits hereto attached, this was in denial of the request made by plaintiff's counsel that the Master be someone in Miami Beach.

Then counsel for appellant in the reply brief complains of the attack made by appellee's counsel on the various motions for vacating the decree, two of which were heard by Judge Holt and one by Judge Wiseheart.

Note: This Court will note from its own records that appellee's motion to strike those subsequent proceedings was granted so the propriety of those motions and all other factors involved therein were passed upon directly by this Court in granting the motion to strike.

On page 5 of appellant's reply brief, counsel for appellant charges several acts showing bias on the part of the Master, and this attack continues for several pages thereafter.

These claims of bias were covered in approximately 10 pages in specific detail, all of which would of necessity have been considered by this Court; but those exceptions, objections and claims about the bias of the Master are pinpointed only on the fact that in considering the weight of the testimony as a whole, he found for the plaintiff below and not for the defendant.

On page 28 of appellant's reply brief, counsel for appellant again argues (Exception 49) with reference to the Master's failure to state the amount of fee which was paid to him. This was in answer to appellee's brief, p. 52. The amount of that fee in the total of $3,500—$500.00 paid on January 26, 1955, and $3,000 paid on March 24, 1955, long before the Master's Report was filed, was fully disclosed.

Counsel for appellant in the reply brief makes no claim that the fee was excessive. The Special Master's Report (Appellant's A. 60-61) showed the certification by the Special Master that he devoted over 80 hours to the taking of testimony, and approximately 125 hours to review of the evidence and proofs, the study and inspection of appropriate authorities and the preparation of the Special Master's Report.

Then the Master certified that the fees of the Special Master for his services in this case have been paid by the plaintiff and receipt of the same "is hereby acknowledged".

This was filed on the 5th day of May, 1955, and there is no showing that any effort was made by defendant's counsel to inquire of the Court or of the Master as to the amount of those fees. No objection was made as to the certification by the Master of the great number of hours and days spent in the case, and no claim was made that the Master or counsel for the plaintiff ever concealed the amount of the fee or were ever asked as to the amount of the fee. This Court had before it the amount and the undisputed and undenied certification of the Master of the time spent, and the entire record, which, including exhibits, consisted of approximately 2,500 typewritten pages.

This Court granted oral argument, and the records will show that additional time of approximately one hour to a side was allowed each counsel. This Court, then consisting of the Division of Chief Justice Terrell, Justices Roberts and O'Connell and Associate Justice Welch, rendered its opinion on May 1, 1957, affirming the Lower Court without opinion.

The records in this Court will show that a petition for rehearing was prepared jointly by Smathers, Thompson &

Dyer of Miami, Florida (who were counsel for the defendant below), and J. Lewis Hall of Tallahassee, Florida, who had entered his appearance after the briefs were filed, but who was present at the oral argument before the Court.

In this petition for rehearing, the same counsel who now raise this same point again in the petition for leave to file a bill in the nature of bill for review, complained of the Special Master receiving an undisclosed amount of money, and claimed it was a violation of Rule 10 (d) of the Rules of the Circuit Court of the 11th Judicial Circuit, and claimed that such a procedure

> "and that the approval and affirmance by this Court of such procedure and the decree resulting therefrom deprives the appellant defendant of a fair trial contemplated under our fundamental law." (P. 2).

Point 2 in the petition for rehearing raised the question of the weight of the evidence on the question of adultery.

Point 3 claimed that this Court had "apparently overlooked and failed to consider in evaluating the evidence and testimony as to residence", certain factors.

Point 4 in the petition for rehearing charges that this Court

> "apparently overlooked and failed to consider that the uncontradicted and undenied documentary evidence establishes beyond a doubt that the appellee plaintiff indulged in lewd * * * language"

and that plaintiff

> "is therefore estopped to assert any such language or dialogue on the part of the defendant wife as grounds for divorce."

Point 6 charged this Court with overlooking the effect of the entire evidence as a whole, as follows:

> "As a result of the complete misconception of the evidence and the legal effect thereof by the Master and the Circuit Judge as aforesaid, the Court failed to correctly apply the law as to what constitutes proof of adultery and completely ignored the overwhelming proof of adultery contained in the admissions of appellee plaintiff in regard to his relations with Judy Wartel."

Ground No. 8 of the petition for rehearing charged this Court with this error:

> "The Court has apparently overlooked and failed to consider the fact that the record demonstrates bias on the part of the Special Master in favor of the appellee plaintiff."

Ground 9 of the petition for rehearing contended that this Court had erred in that

> "The Court has apparently overlooked and failed to consider the fact that the record demonstrates bias on the part of the Chancellor in favor of the plaintiff appellant."

Ground 10 of the petition for rehearing accuses this Court of error, as follows:

> "The Court apparently overlooked and failed to consider that the entire record in this cause:
>
> (a) Bespeaks a lack of jurisdiction because appellee plaintiff was not and is not a bona fide domiciliary of the State of Florida;
>
> (b) That there has been a denial to appellant defendant of:
>
> (1) Due process of law; and
>
> (2) Equal protection of the laws."

With this rather critical, and to some degree contemptuous petition for rehearing, this Court gave due consideration and on October 16, 1956, denied the petition for rehearing.

Relationship and Relevancy of the Petition for Leave to File a Bill in the Nature of a Bill of Review, When Considered in the Light of the Admitted Record Above Analyzed and Other Undisputed Facts.

The supporting brief filed by J. Lewis Hall of Hall, Hartwell & Douglass, contains his analysis of the new matters which are supposed to appeal to this Court so that this Court would exercise its discretion and permit the filing of a bill in the nature of a bill of review, and we take that analysis as the ultimate of what could possibly be contended, wherein it is claimed (Br., 2):

> "Subsequent to the entry of said final decree and subsequent to the affirmance thereof by this Court, certain facts unknown to the plaintiff at the time of the entry of said final decree and affirmance thereof by this Court became known to petitioner and which facts could not have become known to the petitioner by the exercise of reasonable diligence, certain of said facts being as follows:"

Then he outlines under paragraph (a) the charges made in the proposed complaint that George E. H. , who entered the final decree in the cause aforesaid, and Morton Rothenberg and Jack D. Burris, attorneys for Norman N. Holland, enjoyed a close personal relationship.

(b) That John W. Prunty, the Special Master in said cause, was at that time a general partner of Thurman A. Whiteside, and that at the time Thurman A. Whiteside had had financial transactions with Judge Holt where

Judge Holt made an alleged profit of approximately $3,900 on a $450.00 investment.

(c) That Judge George E. Holt and John Prunty, Master, had been close personal friends for upwards of twenty-five years.

These are the only charges which are claimed to be newly discovered evidence showing bias or prejudice which it might be contended were never considered or reviewed in the lengthy proceedings before the Master, the Lower Court and before this Court on the first appeal, and again on petition for rehearing.

There are other charges made in the brief (p. 3), and we brief the statements:

Judge George E. Holt and John Prunty did not recognize the Canons of Ethics adopted by the Supreme Court to be the law of the State of Florida.

Note: All issues relative to the Master's Report and the so-called undisclosed fee were thoroughly discussed, shown in the record and made a part of the briefs and petitions for rehearing before the Supreme Court.

Then Mr. Hall contends (Br., 3-4) that there were other facts which were known to the plaintiff (and we assume he means the defendant below, the Wife) prior to the entry of the final decree complained of

> "but the relationship of said known facts to the above enumerated unknown facts were not apparent to the plaintiff and only after discovery of the above mentioned facts did plaintiff fully appreciate the significance of the following matters".

Then he enumerates under (a) the violation of rule 10-D of the Circuit Court of Dade County with reference to Master's fees, all of which was thoroughly passed upon

by this Court; (b) the issue as to whether the intentions of the plaintiff below with reference to the so-called love affair with Judith H. Wartell were fully considered. This point was covered and brought to the attention of the Court by the exceptions and by the motions made after the final decree and thoroughly discussed in all of the briefs and in the petition for rehearing before this Court.

It is contended that this was some evidence of perjury of the witness below, but, as has been established by this Court in many decisions referred to in our accompanying brief, even if there was perjury, which we do not admit, the evidence cannot be reviewed on a bill in the nature of a bill of review.

The fact that Norman N. Holland and Judith H. Wartell were married on August 4, 1955, after the entry of the final decree in this cause, was thoroughly elaborated on in the briefs and in the record, and that issue is foreclosed by the Court in the decisions on the appeal.

(c) It is charged that John Prunty, as Special Master, ignored the manifest weight of some 46 items of documentary evidence (Br. 5). That point was all foreclosed by the appeal.

(d) That John Prunty as Special Master in the case of Holland v. Holland below, ignored certain testimony or failed to give proper weight, all of which factors were pointed out in the exceptions to the Master's report and the assignments of error and in the respective briefs, and all disclosed by the evidence in the various appendices and in the entire record of the testimony before this Court (Br. 5-6).

Reference to the petition itself and its relationship to the proposed bill of complaint in the nature of bill of re-

view fails to allege that there has been any newly discovered evidence, the consideration of which if it had been known to the Court below, would have brought about another result.

No claim is made of prejudice or bias of the Master in this case other than the fact that the Master was a general law partner of Thurman A. Whiteside, and Thurman A. Whiteside had had one business transaction with Judge George E. Holt.

The petition and the proposed complaint do not charge that there was any collusion between the attorneys for the plaintiff to have this cause referred to the Honorable George E. Holt, one of the ten Circuit Judges, or that they were guilty of any collusion or efforts to have John W. Prunty appointed as a Special Master. The record, as above referred to, reflects that just to the contrary was the truth.

Reference to the proposed complaint itself which is made a part of the petition by reference, reflects nothing but a rehash of the matters which were definitely concluded by the proceedings in the court below.

Pages 1, 2, 3, 4, 5, 6, 7, up to paragraph 4 on page 8, are simple re-allegations of the same matter covered in the original answer which was filed by the wife in the Lower Court and passed on by this Court on the appeal.

Plaintiff then contends on page 8, paragraph 4 of the proposed complaint that certain matters and things transpired and existed during the period of the litigation in the Lower Court, which matters and things were then unknown to plaintiff (meaning the defendant in the case below).

Then, in the attempt to enumerate what those facts are, paragraph 5 of the proposed complaint is a complete

re-statement of the same things which have been previously passed upon in this Court, and is simply a repetition of the record and proceedings taken in that case.

Paragraph (a), page 10, reiterates paragraph (a) which is referred to in the petition and in the brief by counsel, which, briefly stated, contends that Morton Rothenberg and Jack D. Burris enjoyed a close personal relationship with Judge Holt.

(b) That at the time John Prunty was appointed Special Master, Judge Holt was involved in a financial transaction with Thurman A. Whiteside, his law partner, involving some airplane cylinders, but no charge is made that this was reflected in any way by the action of John W. Prunty who passed upon admittedly disputed evidence.

Paragraph (c) (p. 13), simply charged, as above stated, that John Prunty and Judge Holt were personal friends, but it is not alleged wherein that had any bearing upon the factual situation in this case, particularly where the entire record was thoroughly reviewed by this Court not only on the appendices, but under the original record.

Paragraph (d) (p. 13) is simply reiteration with reference to the payment of a Master's fee in an undisclosed amount, all of which was reflected and passed on in the Lower Court and in the Supreme Court in the former proceeding.

There is no charge in the complaint as proposed that the fee was exorbitant or that counsel for defendant in the court below ever made any objection to the certification of the Master as to the number of hours and days spent, or ever asked for information concerning the amount of the fee, or that such information was ever withheld upon request being made therefor.

Paragraph 6 (p. 16) of the proposed bill, without the statement of any other facts, circumstances or charges:

> "Plaintiff alleges that the matters and things set forth and alleged in the preceding paragraphs which were unknown to her at the time of the said former divorce proceedings and which could not have been known through the exercise of reasonable diligence, now clearly demonstrate the venality, bias and prejudice of the said Judge Holt, as the presiding Judge, and of the said John Prunty, as Special Master appointed by the said Judge Holt, in said former proceedings, * * * at the instance and instigation and as a direct result of the corrupt, debauching and unethical practices in and relating to the said former divorce proceeding on the part of the said George E. Holt, as Judge and his appointee, the said John Prunty as Special Master in said former proceeding, * * * and did deprive the plaintiff herein of a fair and impartial trial and which resulted in the venal, biased and prejudiced report filed by the Special Master with the said Judge Holt in the said former proceedings in favor of the defendant herein, and the venal, biased and prejudicial ratification of the said Master's report."

It was charged in the balance of said paragraph that these uncorroborated facts deprived her of due process of law and that because of those unstated facts, but simply upon inference, the present plaintiff of the proposed suit was denied an opportunity to take appropriate legal proceedings to effect the disqualification and remove the said Judge Holt as the presiding Judge and the said John Prunty as Special Master.

No charge is made that Judge Marshall C. Wiseheart who denied a motion to amend the final decree, nor any member of this Court who were thoroughly familiar with each and every of the factual matters in the said case, were

biased or prejudiced. Judge Wiseheart and this Court, sitting as the Reviewing Court, had this same opportunity to evaluate the testimony as did the Chancellor in this case. See *Thomas* v. *Thomas*, 96 So. 2d 771, 773, 774.

Under these circumstances, the ruling of the Supreme Court of Florida as to the weight of the evidence and the circumstances in the case, particularly where the decrees of the Lower Court were affirmed without opinion, becomes the judgment of the Supreme Court of Florida. See *State of Florida ex rel. Mortgage Investment Foundation* v. *James R. Knott*, 97 So. 2d 265, all of which said cases are referred to and analyzed in the supporting brief.

This respondent respectfully shows that such charges are impertinent and are scandalous and are contemptuous with reference to the findings by this Court on appeal, and should be stricken or the motion or petition denied.

The respondent, further answering the petition for leave to file a bill in the nature of review and further answering the allegations of the complaint, proposed copy of which is attached to the petition and made a part thereof, affirmatively says that he has no personal knowledge of any of the relationships, if any, between the Honorable George E. Holt or John W. Prunty or Thurman A. Whiteside. At the time of the institution of this suit in the Lower Court this respondent was not acquainted with John W. Prunty, was not acquainted with Honorable George E. Holt, Circuit Judge, or with Thurman A. Whiteside. The only time this respondent was ever in the presence of the Honorable George E. Holt was at a preliminary hearing at the time application for temporary suit money and attorneys' fees was asked for, in the presence of counsel for both sides.

Respondent denies the allegations of any improper bias or prejudice on the part of the said Master or the

Honorable George E. Holt, and denies each and every allegation of the complaint and the motion or petition for review relative thereto.

This defendant denies ever making any statements to his former wife that this case was fixed or that he had any knowledge or even intimation that anyone claimed that there was any impropriety in any respect.

This respondent further says that he was personally in the presence of the Master at the time certain motions were made at the conclusion of the hearings before the Master as reflected Tr. 2352-4 (Appellee's Appendix 380A-381-382). For the convenience of the Court, these excerpts are as follows (Appellee's A. 380A):

> "Mr. Bonsteel: * * * It was at the request of counsel for the plaintiff in open court—Mr. Burris was not there, so he may not know this—that the case be referred to a Master, and counsel for the defendant agreed on the condition that the plaintiff pay the Master's fee and the costs of the reporting."

Then, as reflected Appellee's A. 381, this statement was made by the Master in the presence of the attorneys and this respondent and other parties:

> "The Master: I also regret the length of the record. I feel I have done what I could to try to keep it down. I should like to say this to counsel. I hope that I have not seemed to be too short-tempered or impatient in this case. It has been a concern of mine to try to get this matter to a conclusion and I should like to inquire of counsel now—I know that you do not agree with a good number of my rulings on the matter of the admission and exclusion of evidence and certainly you have that right to disagree—if there is any general objection to this case having been referred to a Master, to this Master in particular, and to a Master as such.
>
> "

Mr. Burris: We have a stipulation in this record referring this cause to you. Is that not right, Mr. Wallner?

Mr. Wallner: We have that stipulation and we have acquired no objection since that time, Your Honor.

Mr. Bonsteel: We have nothing to register an objection to, Your Honor. On the contrary, I know that this has been prolonged and I want to thank you for your consideration."

(This statement was made February 15, 1955, at the conclusion of the hearings before the Master.)

This respondent, further answering, shows unto the Court that he did marry Judith Wartell on August 4, 1955, about ten days after the signing of the decree of divorce. Respondent further shows unto the Court that he is now married to the said Judith Wartell; that they have lived in Dade County, Florida, as citizens of Dade County, Florida, ever since. Respondent states that he was a *bona fide* citizen of Dade County, Florida, prior to the institution of the suit filed in this case for over a period of 90 days, and that he had come to Florida with the intent of making this State his permanent place of abode and residence and became a citizen hereof. Respondent states that as soon as his qualifications permitted, he registered as a voter on February 7, 1955, and has since voted in the elections. He has filed his income tax returns with the Director of Internal Revenue at Jacksonville, Florida; that he has been permanently employed in the City of Miami, Dade County, Florida, continuously since February of 1954, has maintained his residence under yearly leases at all times since his arrival in the State of Florida, is active in numerous civic and charitable organizations in Dade County, Florida, and denies that he has ever made any statements to his former wife or to anyone intimating that he had

planned to return to the State of New York after his divorce proceedings were concluded, whether favorable or unfavorable to him.

Respondent has filed his application with the Real Estate Commission of the State of Florida for a license as a real estate salesman. Permission has been granted for respondent to take the examination therefor, and respondent is now studying in preparation for the taking of such examination. Before said permission to take the examination, respondent had to qualify as a permanent resident of this State for a sufficient time.

Wherefore, respondent by way of summary says:

1. From the admitted record in this case, as this respondent has attempted to point out in detail hereinabove, it specifically appears that each and every of the fundamental or substantial matters now sought to be relitigated, have already been passed upon by this Court.

2. There has not been any allegation or claim by the plaintiff and the petitioner in this proceeding that she could bring in new evidence, or that there is any new evidence or new witnesses.

3. There has been no showing or even claim that there were any matters at any time in existence which would have been the basis of any statutory or fundamental disqualification of either the Master or the Judge in the Lower Court or any members of this Court.

4. It is not alleged that any purported or claimed bias, which claims were made in the proceedings in the Court below and reviewed by this Court, were based upon any pecuniary interest by the said Master on the outcome of the case one way or another.

5. There are no facts now alleged or any evidence alleged which petitioner claims could be presented to this Court or to the Lower Court to substantiate any claim of bias or prejudice either under grounds of disqualification or any other grounds.

6. It specifically appears that the Honorable George E. Holt as the Chancellor did not interview any of the witnesses and did not have any of the testimony on the merits of the case before him except in the same transcript form of question and answer as was presented verbatim to the Supreme Court of Florida; that his decision was based upon the transcript of the record and the exhibits the same as presented to this Court.

7. The analysis of the original record in connection with the petition for leave to file bill in the nature of bill of review and the proposed new complaint make no factual allegations that the Master, John W. Prunty, was influenced or coerced or acted in any arbitrary manner or fashion during the taking of the testimony, and that taken at its full import, there is simply the sworn complaint by the former wife, unsupported by any other affidavits or suggested testimony or facts, that in her opinion John W. Prunty was prejudiced and should have been disqualified simply because he was—

(a) a partner of Thurman A. Whiteside, who was alleged to have had a business transaction with the Honorable George E. Holt, or

(b) that he was a personal friend of George E. Holt.

There is no allegation or complaint that the attorneys for the plaintiff in the Court below were personal friends or had any social relationship or were mutually under obligation of any kind or manner whatsoever with the Master, John W. Prunty, or that the said attorneys for

the plaintiff made any effort in the first place to have the said Prunty, or any other particular Master, appointed as Master or exercised any influence over the said Master after he was appointed.

WARD & WARD,
1240 duPont Building,
Miami, Florida.
By W. G. Ward,
Attorneys for Respondent.
Norman N. Holland.

I hereby certify that copy of the foregoing response, together with copy of the affidavits of Norman N. Holland and Stanley Joel Levine, were this 20th day of March, 1958, mailed to the attorneys for petitioner, Messrs. Hall, Hartwell & Douglass, Professional Bldg., Tallahassee, Florida.

W. G. Ward.

State of Florida, County of Dade, ss.

Before Me, the undersigned authority, an officer duly authorized to take acknowledgments and administer oaths, personally appeared before me this day Norman N. Holland, who after being by me duly sworn, deposes and says:

I am the respondent in this proceeding, and I was the original plaintiff in the case of Holland v. Holland filed in the Circuit Court of Dade County, Florida, in which a decree of divorce was entered on July 25, 1955. I have read the above and foregoing motion and response to the petition for leave to file an extraordinary petition in the nature of bill of review, and the factual matters alleged and set forth therein are true. I have no personal knowledge of the legal conclusions as to the state of record other than as have been reflected in this response.

Norman N. Holland.

Sworn to and subscribed before me this 20th day of March, A.D. 1958.

Notary Public, State of Florida.

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA, IN CHANCERY

No. 169,465

NORMAN N. HOLLAND, Plaintiff,

vs.

SYLVIA SCHINDLER HOLLAND, Defendant.

CERTIFICATE OF CLERK.

I hereby certify that on the 24th day of May, 1954, a complaint for divorce was filed in this Court wherein the plaintiff was Norman N. Holland and the defendant was Sy via Schindler Holland; that under the rules and regulations governing the Clerk's Office of the Circuit Court of Dade County, Florida, all cases filed other than emergency docket cases, are subject to what is called a blind assignment system, wherein the Clerk's Office makes assignment of all new cases to one of the then ten Judges of the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, in rotation according to formulas which have been adopted by the Clerk's Office. No attorney or court performs any function in the assignment of these cases.

This case was, in accordance with the standard practice, assigned to Division A of the Court, which at that

time was occupied by the Honorable George E. Holt, Circuit Judge.

No person or Judge had prior knowledge of the Division to which this case was automatically assigned prior to the assignment thereof.

In witness of this certification, I have hereunto set my hand and seal this, the 20th day of March, 1958.

E. B. Leatherman,

Clerk of the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida,

By

Deputy Clerk.

IN THE SUPREME COURT OF FLORIDA

SYLVIA SCHINDLER HOLLAND, Petitioner,

vs.

NORMAN N. HOLLAND, Respondent.

AFFIDAVIT OF STANLEY JOEL LEVINE.

State of Florida, County of Dade, ss.

Before me, the undersigned authority, an officer duly authorized to take acknowledgments and administer oaths, personally appeared before me this day Stanley Joel Levine, who after being by me duly sworn, deposes and says;

I am a practicing attorney and member of the Dade County and Florida Bar, with offices at 420 Lincoln Road, Miami Beach, Florida.

I was practicing law on May 24, 19[illegible] and was one of the counsel of record on behalf of the [illegible]ntiff, Norman N.

Holland, and as such participated in the preparation and filing of the complaint for divorce in case number 169,465, Chancery, lately pending in the Circuit Court of Dade County, Florida.

I had been personally acquainted with Norman N. Holland for approximately thirty years and had handled certain legal transactions for him in the early part of 1954 when he was a resident of Dade County, Florida, consisting of his sale of his interest in businesses in which he had been formerly engaged in the State of New York. Those preliminary arrangements for the sale of that business had been carried on for some time prior to my participation in the case, and my participation was solely in the consummation of that transaction.

As reflected in the previous record in this case, the purpose of that sale was for the assignment of the proceeds thereof *in toto* for the support of the children of his then wife, said parties having separated some time prior thereto, on or about October 31, 1953, all as reflected in the transcript of the record.

I had been first employed and subsequently became a partner of Jack D. Burris in the years 1950 and 1951. During that period I became familiar with Mr. Burris' trial experience. I have a 30% hearing deficiency and do not engage in any trial work except in minor matters, otherwise associating other counsel. I have made a practice of calling upon Mr. Burris or other members of the Bar to handle trial matters in which my office is retained.

While Mr. Holland was residing here, he became aware of the fact that his former wife, the petitioner herein, had instituted a separate maintenance action in the Supreme Court of the State of New York against him. Mr. Holland thereupon consulted with me and I called upon Mr. Burris

as a consultant. Mr. Holland advised Mr. Burris and me that he desired to institute a divorce proceeding in the State of Florida, and that he would not submit to the jurisdiction of the New York Court because he was not a resident of that State.

Mr. Burris advised me that he was in the process of transferring his office from his former association with Jack A. Abbott to a new association with the Honorable Morton Rothenberg.

Mr. Burris advised me to file the complaint for divorce in my name alone. He further stated that if the complaint resulted in a default, his services would then not be needed, but that if the matter became contested he would be glad to become associated with me and handle the trial proceedings. The association was arranged with Mr. Burris prior to his association with Morton Rothenberg.

The complaint was filed by me on May 24, 1954. Thereafter petitioner herein filed an appearance through counsel, and it thereupon became a litigated matter. Accordingly I communicated with Mr. Burris and arranged for his new firm to participate in the case as associate counsel, all in accordance with the previous agreement and understanding.

I had never had contact of any kind whatsoever with either the Honorable George E. Holt, Circuit Judge, or the Honorable John Prunty, Master, except for court appearances in open court before Judge Holt, and my attendance during the hearings in the Holland case before John Prunty.

In November of 1955, the question came up of the hearing of the testimony before the Court personally, or

whether the matter should be referred to a Master for the convenience of both parties. I appeared before the Honorable George E. Holt with Mr. Louis Bonsteel, attorney for the then defendant. I stated to the Court that Mr. Holland and some of his witnesses resided in Miami Beach, and suggested that a Special Master be appointed from among the Bar of Miami Beach, Florida. Mr. Bonsteel objected to any Miami Beach lawyer, and requested for his convenience that a lawyer "on this side of the Bay" be appointed. Judge Holt ruled that he would appoint a Special Master with offices in Miami, in compliance with the request of Mr. Bonsteel.

Several days thereafter and as of November 29, 1954, an order of reference was entered appointing the said John W. Prunty having his office in the same office building in Miami, Florida, as attorney Bonsteel, as Special Master, to which neither side then or thereafter objected.

Certain matters have been charged against me in paragraph 11 of petitioner's complaint attached to the petition which is before this Court. In response thereto I state:

"I deny that I at any time ever stated to any person, either directly, in substance or by inference, that I subscribe to the belief that, in the practice of the law, "it was ethical and proper for an attorney at law to offer to pay or to arrange for his client to offer and to pay a bribe to people in public office if the purpose of the bribe was to secure rights to which the client believed he was entitled."

Such statement has never previously been attributed to me by petitioner or her attorneys in any previous paper filed in the divorce case, despite the fact that the conference referred to in which the said statement is alleged to have been made was the subject of three separate affidavits

by Louis Bonsteel, former counsel for petitioner. I state that said charge is false.

I deny that at said conference I stated that petitioner herein did not have a chance to prevail in the action, regardless of the proof that might be adduced in her favor. Such statement could not have been made by me by reason of the fact that the alleged conference took place (as conceded by petitioner) on October 4, 1955, which was after the final decree had been entered on July 25, 1955.

I deny that I stated that it was a matter of common knowledge that Judge Holt spends more than three times his visible income and that I knew where Judge Holt obtained extra funds for his living expenses, or that I stated that Judge Holt was owned by three men from Miami Beach and that I well knew the three men and how to reach them.

This statement has never been attributed to me in any document heretofore filed in the divorce case by petitioner's counsel, despite the fact that affidavits have been filed by said counsel purportedly summarizing what was said at said conference of October 4, 1955 (See Appellee's A. 380-A).

I deny that at said conference, or at any other time, I ever stated that I could tell a very interesting story about the Honorable John Prunty and that, at the conclusion of the divorce action, I would relate said interesting story about the Honorable John Prunty.

I further state with reference to the foregoing that after the Master's hearings had been concluded, Burris, L. S. Bonsteel and I met in Walgreen's Drug Store in Miami, Florida, and sat at the same table. During the conversation Mr. Burris, in a jocular manner, stated to Mr. Bonsteel that

it appeared that the New York attorney, Jerome Wallner, had taken over control of the trial and was directing Mr. Bonsteel's every move. Mr. Bonsteel responded that he was having a lot of trouble with Mr. Wallner and his New York employer, Mr. Louis Nizer, and Mr. Bonsteel then stated to me and Mr. Burris: "After this case is over, I will tell you an interesting story about the Nizer Office and Mr. Wallner and my relation with them in this case."

I deny that I offered a settlement to petitioner because respondent, Norman N. Holland, wanted to return to New York where he could earn two or three times his Florida earnings. This matter was previously raised in a former affidavit filed by Mr. Bonsteel, referring to the conference of October 4, 1955. It was answered by me in an affidavit filed October 19, 1955, which is part of the record before this Court and appears Tr. 2532-6 (Appellee's A. 394). This affidavit was considered by this Court in its final determination of the cause on appeal.

I deny that I stated that I knew of a telephone call alleged to have been made by Norman N. Holland to petitioner herein, in which Mr. Holland is alleged to have informed petitioner herein that the case had been fixed and that the Master had ruled in his favor. The telephone call from Mr. Holland is claimed in the proposed complaint to have taken place before the Master's report was filed, namely, before May 24, 1955.

I know of no such telephone call and have never made any statement that I did know of such call.

I state that the analysis of the pleadings and record reviewed by this Court and the numerous affidavits filed by Mr. Bonsteel are all a matter of record in this Court, and that no such claims have ever been heretofore made.

Sworn to and subscribed before me this 20th day of March, 1958.

.....,
Notary Public, State of Florida.

Office Supreme Court, U. S.
FILED
OCT 25 1958
[illegible], Clerk

IN THE

Supreme Court of the United States

October Term, 1958

No. 370

SYLVIA SCHINDLER HOLLAND,
Petitioner,

vs.

NORMAN N. HOLLAND,
Respondent.

PETITIONER'S BRIEF IN REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA.

LOUIS NIZER,
Counsel for Petitioner,
1501 Broadway,
New York 36, New York.

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PETITIONER'S BRIEF IN REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA.

I.

Most conspicuous in respondent's brief is its utter default in answering the petition, both on the law and the facts.

Respondent has not attempted to challenge the factual basis for certiorari, because it is sworn testimony of the very principals involved—Judge Holt, Special Master Prunty, his law partner Thurman A. Whiteside and respondent's counsel, Morton Rothenberg—given before the Investigating Committee of the Florida House of Representatives and the Senate of Florida during Judge Holt's impeachment trial.

Respondent has chosen also to ignore the constitutional question raised below and unequivocally presented by the petition, the denial of due process by the deprivation of a

fair hearing before an impartial tribunal.[1] Instead, he has conjured up a straw question, nowhere urged (i.e., impairment of the obligation of the marriage contract), and has proceeded to knock it down. The question of due process, resting firmly on its foundation of undisputed record facts, remains an uncontested ground for the granting of this petition.

II.

The contention that petitioner's statutory time to appeal or to petition for certiorari has elapsed wholly overlooks the established purpose and nature of bills of review in equity. The relationship *inter se* and unethical practices of Judge Holt, Special Master Prunty, Thurman A. Whiteside and respondent's attorney Rothenberg came to light as the legislative investigation and impeachment proceedings against Judge Holt progressed and were not fully apparent until his impeachment trial before the Florida Senate had been concluded and the transcript of the minutes in both proceedings became available.[2]

Indeed, the circumstances here vividly illustrate the reason why equity has traditionally recognized that, however final a judgment, it is subject to review when evidence of fraud is subsequently discovered. In *Hazel-Atlas Glass Co.* v. *Hartford-Empire Co.*, 322 U. S. 238 (1944) Mr. Justice Black explained the principle in these words:

> "From the beginning there has existed alongside the term rule a rule of equity to the effect that

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[1] Respondent's reference to "subsequent motions" before Circuit Judge Wiseheart is misleading. (Respondent's Brief, pp. 2-3) Judge Wiseheart, who was Judge Holt's alternate, summarily denied a motion to vacate the decree predicated upon respondent's marriage to his paramour immediately after his divorce from petitioner, in the face of his testimony denying any plan to marry her (R. 2515-2524). Judge Holt was on vacation when an immediate motion was necessary for jurisdictional reasons, prior to the filing of a notice of appeal. The motion was subsequently reargued before Judge Holt and was again denied (R. 2526-2527; 2537).

[2] See petition herein, pp. 7-12

> under certain circumstances, one of which is after-discovered fraud, relief will be granted against judgments regardless of the term of their entry." (322 U. S. at 244).

In the same opinion it was further stated:

> "Litigants who have sought to invoke this equity power customarily have done so by bills of review or bills in the nature of bills of review, or by original proceedings to enjoin enforcement of a judgment. * * * But whatever form the relief has taken in particular cases, the net result in every case has been the same: where the situation has required the court has, in some manner, devitalized the judgment even though the term at which it was entered had long since passed away." (322 U. S. at 245.)[3]

Respondent's contention[4] that petitioner would not have been successful had she petitioned this Court for certiorari before discovery of the evidence revealed in Judge Holt's impeachment proceedings utterly ignores the basis of petitioner's application. Petitioner predicates her claim of the denial of due process precisely upon that after-discovered evidence. Respondent's assertion that relief is foreclosed because petitioner's time has expired, seeks, in effect, to render this Court impotent in the face of manifest injustice. Ample, unquestioned precedent has rejected his contention.[5]

III.

Respondent's argument that the denial by the Supreme Court of Florida of the petition for leave to file a bill of review was a matter of discretion and therefore not appealable assumes that the label "discretion" confers upon a judicial ruling confiscatory of constitutional rights a badge of immunity from appellate review. Such, of course, is not

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[3] See also the authorities cited on pp. 15-16 of the petition herein.

[4] See pp. 6-7 of Respondent's brief.

[5] *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, *supra*, and authorities therein cited.

the law. Judicial discretion has well recognized limitations and is reversible when such limitations are exceeded. As this Court has stated:

> "When invoked as a guide to judicial action it means a sound discretion, that is to say, a discretion exercised not arbitrarily or wilfully, but with regard to what is right and equitable under the circumstances and the law, and directed by the reason and conscience of the judge to a just result."[6]

Here denial of the petition for *leave* to file a bill of review, foreclosing any possible review in the Florida courts of the constitutional questions raised by petitioner, was itself so arbitrary and capricious, so totally lacking in "regard to what is right and equitable under the circumstances and the law", that it was not only a clear abuse of discretion but was itself a denial of due process, as urged in the petition herein.[7]

In *Hazel-Atlas Glass Co.* v. *Hartford-Empire Co.*, *supra*, where it was found that fraud had been perpetrated upon the lower court, this Court stated:

> "We hold, therefore, that the Circuit Court on the record here presented had both the duty and the power to vacate its own judgment and to give the District Court appropriate directions." (322 U. S. at 249-250).

Here, too, the Supreme Court of Florida had both the duty and the power to permit filing of petitioner's bill of review. The Constitution would indeed be a hollow instrument if rights it guaranteed could be denied as a matter of discretion.

IV.

On October 20, 1958, in *Sangamon Valley Television Corp.* v. *U. S.* and *WIRL Television Corp.* v. *U. S.*, 27 LW 3127 (Nos. 235 and 242, October Term, 1958) this Court

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[6] *Langnes* v. *Green*, 282 U. S. 531, 541 (1931).

[7] Petition, pp. 3, 15.

granted certiorari and vacated judgments of the United States Court of Appeals which had affirmed the assignment of television channels by the Federal Communications Commission, and remanded the cases for appropriate action in view of testimony given before a Congressional Committee concerning improper influence upon members of the Commission when those cases were before it.

Due process demands, at the very least, review of a determination where evidence is discovered demonstrating bias, corruption and improper influence in the tribunal. Here, the Supreme Court of Florida has refused to permit review under those very circumstances.

We urge that certiorari be granted on the record here presented, and we further respectfully submit that, inasmuch as the controlling facts are uncontested and indisputable, this case warrants a judgment of reversal on the petition for certiorari.

Respectfully submitted,

LOUIS NIZER,
Counsel for Petitioner.

October 23, 1958.